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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 21.

BACARDI CORPORATION OF AMERICA,
Petitioner,

v.

MANUEL V. DOMENECH (formerly Rafael Sancho Bonet),
Treasurer of Puerto Rico,
Respondent,

and

DESTILERIA SERRALLES, INC.,
Intervenor-Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT OF APPEALS, FIRST CIRCUIT.

BRIEF FOR INTERVENOR-RESPONDENT, DESTILERIA SERRALLES, INC.

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Opinions of the Courts Below.

The opinion of the District Court is not officially reported. It is in the Transcript of the Record at pages 95-116. The opinion of the Circuit Court of Appeals (R. 429-443) is reported in 109 F. (2d) 57. This court granted certiorari on April 22, 1940, 309 U. S. 652 (R. 444).

Questions Presented.

The basic question is the validity of three Puerto Rican statutes which were designed to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor. The pertinent sections of Act No. 149, approved May 15, 1937, which was the final act, are Sections 3 and 4. Section 3 amended section 44 of Act No. 6 and, as it now reads, it prohibits the manufacture (by holders of the requisite permit) of alcoholic beverages on the containers or caps of the containers of which there appears,

> "* * * any trade mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico: *Provided,* That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

By section 7 of Act No. 149, the Proviso of Section 44 of Act No. 6, as amended by Section 3 of Act 149 (quoted above), is, "in regard to trade marks only", made applicable

> "* * * to such trade marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits prior to February 1, 1936, provided such trade marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date."

Act No. 149, Section 4, also provides that, with exceptions not here relevant, distilled spirits may be shipped or exported from Puerto Rico or imported into Puerto Rico "only in containers holding not more than one gallon."

The specific questions involved may be stated as follows:

1. Is the Bacardi Corporation of America, the petitioner, estopped to question the statute herein involved?

2. Is the statute in conflict with the Inter-American Convention for Trade-mark and Commercial Protection?

3. Does the statute conflict with the Federal Alcohol Administration Act?

4. Does the statute violate the commerce clause of the Constitution?

5. Does the statute deny petitioner the equal protection of the laws or deprive it of property without due process of law?

Decision of the District Court.

The District Court held the legislation invalid under the commerce clause of the Constitution and the due process and equal protection clauses. It overruled or disregarded the contentions of the petitioner as to the supposed violation of the Federal Alcohol Administration Act and of the Treaty.

Decision of the Circuit Court of Appeals.

The Circuit Court of Appeals reversed the decision of the District Court. It held the legislation valid. Its findings on the various issues involved were:

1. The statute is not invalid under the commerce clause of the Constitution of the United States because that clause does not extend to Puerto Rico.

2. The Federal Alcohol Administration Act does not deprive the legislature of Puerto Rico of the right to enact, in the exercise of its police power, the territorial statute restricting the use of labels. With respect to the limitation placed upon shipments in bulk, the Court said, "We cannot read into this statute (the Federal Alcohol Administration Act) an intent upon the part of Congress to bar the territorial statutes governing shipments in bulk" (R. 437).

3. Since Puerto Rico could constitutionally deny any foreign corporation or non-resident the right to manufacture or sell rum within Puerto Rico, it could impose the conditions contained in the statute without violating the due process clause.

4. The Puerto Rican statute is not repugnant to the equal protection clause even though only one manufacturer was affected when the action challenging the statute was heard, because the provisions attacked applied to all who might later engage in the business.

5. The validity of a statute is not to depend upon a particular manufacturer's expectation that in the exercise of its police powers, a law-making body may not change its policies or its laws.

6. Since the provisions of the Acts here assailed are valid, it is not necessary to decide whether the plaintiff-appellee (now the petitioner) is estopped to question the validity of the challenged statutes.

Statutes.

Those portions of the Puerto Rican liquor statutes which are challenged by the petitioner are set forth in the Statement and are also set forth in Appendix A (*post,* pp. 65-72); Constitutional provisions are in Appendix B (*post,* p. 72); the pertinent sections of the Organic Act for Puerto

Rico in Appendix C (*post*, p. 73); excerpts from the Federal Alcohol Administration Act in Appendix D (*post*, pp. 74-80) and the General Inter-American Convention for Trade-mark and Commercial Protection in Appendix E (*post*, pp. 81, *et seq.*).

Statement.

This case involves the validity of certain sections of the Spirits and Alcoholic Beverages Act of Puerto Rico, as amended. Petitioner sued the Treasurer of Puerto Rico in the Federal District Court for Puerto Rico seeking a declaratory judgment and an injunction restraining that official from enforcing the assailed provisions of the statute. The District Court granted the injunction on the grounds that the statute was invalid (R. 95-116). The Circuit Court of Appeals for the First Circuit reversed this decision (109 F. (2d) 57; R. 429-443). This Court granted certiorari on April 22, 1940 (R. 444).

The Bacardi rum business, established in Cuba, was incorporated there as Compania Ron Bacardi, S. A. in 1919. That corporation has ever since conducted and still conducts the business of producing alcoholic liquors, principally rum, in Cuba which is sold under various trade names including the word "Bacardi," "Bacardi y Cia," trade-marks in which appear the representation of a bat in a circular frame, and certain distinctive labels (R. 2, Finding 6; R. 110).

Compania Ron Bacardi, S. A. (the Cuban Company), during the period 1933 to 1936 registered, among others, seven trade-marks in the United States Patent Office. Four of these seven trade-marks were registered in the office of

the Executive Secretary of Puerto Rico on April 10, 1935, as follows:

No. 3916—Bacardi
No. 3917—Bat Trade-mark
No. 3918—Ron Bacardi Superior Carta de Oro
No. 3919—Ron Bacardi Superior Carta Blanca

Bacardi rum, prior to prohibition was sold in large quantities in the United States and in Puerto Rico, and after the repeal of prohibition the sales were resumed and have continued in both places to the present time. All of the aforesaid sales were made under the above described trade names, and later, trade-marks (R. 2-4; finding 7; R. 110).

The petitioner, a Pennsylvania corporation, organized April 24, 1934, acquired on June 8, 1934 from Compania Ron Bacardi, S. A., the right to use its registered trade-marks and also obtained disclosures of the secret processes and methods of producing Bacardi rum. Pursuant to such agreement, it brought to Puerto Rico in 1936 certain technicians who have instructed petitioner's employees in the use of said processes and methods, and who have supervised petitioner's manufacture of rum in Puerto Rico.

The petitioner at first did business in Pennsylvania, but on March 28, 1936, its basic permits to warehouse, rectify, and bottle alcoholic beverages in Pennsylvania which were still in effect, were amended by the Federal Alcohol Administration to enable the petitioner to operate in Puerto Rico (R. 4-5; Finding 15; R. 112). The labels used by the petitioner in Puerto Rico have been approved by the Federal Alcohol Administration.

On March 31, 1936, petitioner received from the Executive Secretary of Puerto Rico a certificate of registration

as a foreign corporation and received from the same official on April 6, 1936, a license to do business in Puerto Rico which license has been renewed from year to year (R. 5; Finding 10; R. 110, 111). It rented a building (with option of purchase) and moved certain equipment and materials from Pennsylvania and Cuba. Between April 6, 1936 and May 15, 1936, petitioner expended about $45,000 (R. 6). This plant produced the rum "Ron Hatuey" which was sold locally in Puerto Rico. Petitioner also secured a permit to produce and sell the rum "Consumo Corriente", likewise sold locally.

On May 15, 1936, sixty-five days prior to the issuance of the permit to the petitioner, Law No. 115 was approved which stated in its title that it was enacted "* * * to Regulate the Production, Manufacture, Importation, and Sale of Alcohol, Spirits, and Alcoholic Beverages * * *."

Subsection C (1) of Section 41 of said Act provided that permits should be issued to persons who on February 1, 1936, possessed a license or permit. Section C (2) provided for the issuance of permits to others complying with the requirements therein set forth. Applicants were required to make the statement that they had no intention to violate clauses (h) and (i) which read as follows:

> "(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name or trade-mark, the proper name of the manufacturer thereof, such name shall not in any manner or form whatever appear on the labels for any distilled spirits of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico.
>
> "(i) The production capacity of existing distilleries, manufacturing plants and rectifying and bot-

tling plants may be increased so as to meet the consumption demands for the brands now produced, or to meet the demand brought about by the manufacture of new brands not in conflict with clause (g) of this title."

Clause (g) referred to in clause (i) reads as follows:

"(g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; Provided, (1) That such limitation aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand, trade name or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico" (R. 6-9).

Act No. 115 was repealed by Act No. 6 of the Third Special Session of the 13th Legislature. Act No. 6 was approved June 30, 1936, took effect on July 1, 1936, and was by its terms to expire on September 30, 1937.

Section 44 of Act No. 6 provided:

"Section 44.—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formally known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; Provided, That this

limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico prior to the approval of this Act; and Provided, further, That distilled spirits with the exception of ethylic alcohol, 180° proof or more, industrial alcohol denatured according to an authorized formulae, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and the regulations of the Treasurer."

Subsequent to the passage of Law No. 6, petitioner, on July 16, 1936 applied for a permit which by the above law was required in order to engage in the business of distilling rum in Puerto Rico. On July 20, 1936 the Treasurer of Puerto Rico granted the requested permit to the petitioner. It stated:

"This permit is conditioned to the compliance with the provisions of the Alcoholic Beverages Law of Puerto Rico and of all the Rules applicable in accordance with the Law now in force or which may be in force in the future, and in accordance with the Federal Laws and Regulations applicable thereto, and shall be in force from the date of its issuance and until it may be suspended, revoked, annulled, voluntarily surrendered, or that may be terminated by virtue of the provisions of the Law of Regulations.

"This permit is personal and untransferable" (R.288).

Act No. 149, passed during the 1937 Regular Session of the Puerto Rican Legislature, was approved on May 15, 1937, became effective on August 13, 1937, and was the last statute enacted providing for a comprehensive regulation

of the liquor industry in Puerto Rico. It consists mostly of amendments to Act No. 6.

Section 1 of Act No. 6 was amended by adding the following:

> "It has been and is the intention and policy of this legislature to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market."

Section 40 of Act No. 6 was amended to provide explicitly the size of the letters which should be used on labels. The amendment is set forth in full in the appendix, *post*, page .

Section 44 of Act No. 6 was amended so that in its final form it reads as follows:

> "Section 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; *provided*, That this limitation shall not apply to the designations used by a distiller, rectifier, manufac-

turer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

A new section, 44(b) was added which reenacted the prohibition against the shipping of rum from Puerto Rico in containers holding more than one gallon, except in the case of rectifiers who wished to withdraw from the business and whose stock on hand did not exceed 30,000 gallons.

Section 44(b) is set out in full in the appendix (*post*, pp. 69-70).

A new section, 97(b) providing for appeals to the courts, was added. See appendix (*post*, p. 70).

Section 6 of Act 149 made Act No. 6, as amended, a permanent law.

Section 7 of Act No. 149 provided:

> "In regard to trade-marks only, the provisions in the 'directing' part of Article 44 of Law No. 6, approved on June 30, 1936, shall be applicable as is hereby amended, to those trade-marks that have been used exclusively in continental United States by a distiller, rectifier, manufacturer, or packer of distilled spirits prior to February 1st, 1936, provided, that said trade-marks were not used in whole or in part by a distiller, rectifier, manufacturer or packer of distilled spirits outside of continental United States at any time prior to said date."

During the period that Act No. 6, which forbade the distillation of Puerto Rican rum under foreign labels or trade-marks, was in effect, it is stated in the complaint (R. 11) that:

> "All stocks of the high grade rum accumulating, were in the process of maturing for *marketing under the regular Bacardi rum label, trade-marks and brands which the plaintiff is authorized by the*

Cuban Company to use and which are registered in the United States Patent Office, and in the office of the Executive Secretary of Puerto Rico." (Italics supplied.)

During the period 1933 to 1937 Compania Ron Bacardi (the Cuban Corporation) sold in the United States more than 375,000 cases of rum under its registered trade-marks and spent more than $300,000 in advertising rum bearing the said trade-marks. (Finding 8; R. 110). The petitioner has appropriated $17,500 to be spent in advertising and promotion of the Puerto Rican Bacardi rum, but at the time of the hearing January 17, 1938, had spent only $1,700 (Testimony of Bosch, R. 140). Beginning with November 1936 both the petitioner and the Cuban Corporation were selling rum under various Bacardi trade-marks in the United States (Testimony of Bosch, R. 145-146).

On July 31, 1937, plaintiff, appellee, filed its complaint praying that the defendant, Rafael Sancho Bonet, as Treasurer of Puerto Rico, be enjoined from enforcing Sections 2, 3, 4, 5, and 7 of Act 149 on the ground that each of said sections is contrary to and violates:

"1. The Fifth and Fourteenth Amendments to the Constitution of the United States and the Commerce Clause thereof, Article 1, Section 8, Clause 3.

"2. Sections 2 and 9 of the Organic Act of Puerto Rico approved March 2, 1917, Chapter 145, Laws of 1917.

"3. The 'Federal Alcohol Administration Act,' approved August 25, 1935, as amended.

"4. The Convention between the United States and Cuba. Treaty Series, 833, U. S. Statutes at Large, Vol. 46, page 2907, signed February 20, 1929, proclaimed by the President of the United States, February 27, 1931" (R. 21-22).

Further allegations of invalidity were:

> "Section 44 of Act No. 6 is also void and of no effect because the subject matter of said section is not embraced in the title of said Act, as required by Section 34 of the Organic Act of Puerto Rico. That Sec. 44-B is also null and void because it is contrary to Section 34 of the Organic Act of Puerto Rico, as the subject matter of that Section is not mentioned in the title of the Act" (R. 22).

The intervenor-respondent filed an answer as intervenor (R. 77-92), which alleged that the statute was valid and which set up five special defenses (R. 92-22) as follows:

1. Because of its having accepted benefits under the Act, the petitioner is estopped to challenge it.

2. The challenged Acts are valid because enacted pursuant to the police power.

3. The challenged Acts are valid because they are necessary enactments for the control and regulation of the liquor traffic in Puerto Rico.

4. The petitioner is estopped by its laches to challenge the statutes.

5. The facts stated in the bill do not constitute an equitable action.

A preliminary injunction was issued on August 3, 1937 (R. 95), and a permanent injunction was entered on June 30, 1938 (R. 117), prohibiting enforcement of the statute.

Summary of Argument.

The petitioner, by applying for and accepting a permit under the Puerto Rican statutes is estopped from challenging the statutes. It could not, nor could any other distiller, obtain the permits without accepting the conditions which were attached to the granting of the permits. By

accepting the permits and operating under them petitioner accepted every advantage which the statutes could give and it may not refuse now to be bound by the conditions which it finds are onerous.

The statutes in question were enacted as an exercise of the police powers of Puerto Rico; they deal with a subject which is peculiarly a local matter; they operate equally upon all in the same class and therefore do not deny to any equal protection of the laws, nor do they deprive anyone of property without due process of law.

The Federal Alcohol Control Law is operative only where there is a state or territorial law permitting the manufacture of alcoholic beverages, and it is only after compliance with those laws that a distiller is in a position to receive the permits and licenses of the Federal Alcoholic Administration and be bound by the Act and regulations issued thereunder. It follows that state or territorial legislation is not in conflict with the Federal Alcoholic Administration Act merely because labelling and shipping provisions of the local legislation are different from the Federal Act.

The interstate commerce clause does not extend to Puerto Rico, but even if it did, the statutes in question are not void as a regulation thereof. Where the manufacture of an article may be wholly prohibited, there is no impairment of the commerce clause by statutes which regulate the method of shipment of such article.

The Puerto Rican statutes are not in conflict with the Inter-American Convention for Trade-mark and Commercial Protection. That Convention was entered into for the purpose of preventing piracy of trade-marks and trade names and the statutes in question in no way run counter to that purpose.

ARGUMENT.

POINT I.

Petitioner is estopped to question the validity of the challenged statute.

It is a well established principle of law that when a privilege which may be withheld is granted, one who accepts the privileges may not pick and choose from among the sections of the statute those which he will obey and those which he will challenge. *Frost* v. *Corporation Commission,* 278 U. S. 515, 527; *Buck* v. *Kuykendall,* 267 U. S. 307, 316; *St. Louis Company* v. *Prendergast Construction Company,* 260 U. S. 469, 472; *Hurley* v. *Commissioner of Fisheries,* 257 U. S. 223, 225. "By accepting the privilege it voluntarily consented to be bound by the conditions." *Pullman Co.* v. *Kansas,* 216 U. S. 56, 66.

If a statute requires that a license or a permit be obtained for the conduct of a business, the receipt of such a license or permit precludes a challenge of the Act under which the license or permit was obtained in a proceeding brought to enjoin the continued operation of the enterprise after a revocation of the permit. *Cooley on Constitutional Limitations* (8th Ed.) Vol. 1, page 369. This was well exemplified in the case of *American Bond & Mortgage Co.* v. *United States,* 52 F. (2d) 318 (C. C. A. 7; Cert. denied, 285 U. S. 538).

The American Bond & Mortgage Company had received from the Federal Radio Commission a license to operate a broadcasting station in Chicago. The permit was later revoked but the Bond & Mortgage Company continued to operate the broadcasting station. The United States brought proceedings to enjoin the continued operation and

the Bond & Mortgage Company defended on the ground that the Radio Act was unconstitutional.

In order to obtain the permit under which it had been broadcasting, the Bond & Mortgage Co. had been required to comply with Section 85 of the Radio Act of 1927, which is now Section 304 of the Communications Act of 1934, and which provided as follows:

> "Sec. 85, * * * No station license shall be granted by the commission * * * until the applicant therefor shall have signed a waiver of any claim to the use of any particular frequency or wave length or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise."

It was held that the Bond & Mortgage Company, in view of the provisions of the Act and in view of the fact that it had voluntarily made itself subject to the Act, could not assail those parts of the Act which it subsequently found burdensome.

This rule has been applied where a statute has been attacked as being repugnant to the due process and equal protection of the Fourteenth Amendment, and the commerce clause of the Constitution of the United States. *Grand Rapids & Indiana Ry. Co.* v. *Osborn,* 193 U. S. 17. In 1896 the Grand Rapids and Indiana Railroad Co. was sold at a foreclosure sale and purchased by one John C. Sims. Subsequently, Sims and his associates executed the certificate authorized by and complied with all the requirements in section 2 of Article 1 of Act 198 of the Session of 1873 of the Michigan Legislature. Under this section, the new corporation obtained the same rights and privileges as were possessed by the original company. In 1889, subdivision ninth of section 9 of Article II of the General Rail-

road Law of 1873—the section containing an enumeration of the powers conferred upon railroad corporations—had been amended to provide for the regulation of tolls and compensation to be paid for transportation and this was in force at the time the plaintiff in error was incorporated.

The case came to this court on a writ of error to review a judgment awarding a peremptory writ of mandamus commanding the plaintiff in error to reduce its rates for the transportation of passengers over its lines. The company claimed that the statute was repugnant to the due process and equal protection clauses of the Fourteenth Amendment, and also violated the commerce clause of the Constitution of the United States.

In affirming the decision of the State Court, Mr. Justice White, at page 29, stated:

> "Having voluntarily accepted the privileges and benefits of the incorporation law of Michigan the company was bound by the provisions of existing laws regulating rates of fares upon railroads, and it is estopped from repudiating the burdens attached by the statute to the privilege of becoming an incorporated body."

This decision was cited and followed in *Baltimore & Ohio Railroad Co.* v. *Lambert Run Coal Co.* 267 Fed. 776 (C. C. A. 4) (Cert. denied 254 U. S. 651), where again the right to challenge a statute by one who received benefits under it was passed upon. The Transportation Act of 1920 gave the plaintiff the right of equality in the distribution of coal cars of the defendant railroad company. The statute also provided that the Interstate Commerce Commission could, in its discretion, suspend the right to equality of distribution without a hearing. The Railroad Company, acting under an order of suspension from the Interstate

Commerce Commission, refused to grant equality and suit was brought by the Coal Company to enjoin the Railroad Company from distributing coal cars except on principles of strict equality. A motion was made to dismiss the bill by the Railroad Company, it having alleged in its answer its authority to deny equal distribution by reason of the Commission's order of suspension. The plaintiff had asserted that the statute, in giving the Interstate Commerce Commission the right to suspend without a hearing was unconstitutional. The Court said at page 781:

> "Plaintiff's right to equality in the distribution of coal cars was conferred by statute. The Congress, in conferring the right, could place upon it any limitation or conditions it saw fit, including the limitation that the right may be suspended by the Interstate Commerce Commission in its discretion without a hearing. The plaintiff, claiming benefits of the statute, cannot assert the unconstitutionality of its limitations. *Daniels* v. *Tearney,* 102 U. S. 415; *Grand Rapids and Indiana Railroad Co.* v. *Osborne,* 193 U. S. 17. For these reasons the motion to dismiss the bill should have been granted."

The facts in the instant case bring the Bacardi Corporation of America, petitioner herein, squarely within the rule above discussed and therefore it had no standing in the District Court to challenge the validity of the laws under which it was operating. The distillation of intoxicating liquor is local business. *Premier-Pabst Co.* v. *Grosscup,* 298 U. S. 226; *Mugler* v. *Kansas,* 123 U. S. 623. It is well established that a State may exclude a foreign corporation from doing local business. *Bank of Augusta* v. *Earle,* 13 Pet. 519. There is no valid reason to deny this same right to Puerto Rico. The Bacardi Corporation of America, having accepted the privilege to engage in this

local business, must accept the conditions and is estopped to deny the constitutionality of the law.

The petitioner received its rectifier's permit on July 20, 1936, which was sixty-five days after Act 115 was approved, and twenty days after Act No. 6 had been approved which superseded Act No. 115 (R. 6). Without this permit, the petitioner had no right to distill or rectify rum, and it was only by complying with the requirements of Act No. 6 that the petitioner could obtain the permit. Section 44 of Act No. 6 provided:

> "No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formally known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; PROVIDED, That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico, prior to the approval of this Act; and Provided further, That distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and the regulations of the Treasurer."

It is patent that the petitioner herein was in no different position than Bond & Mortgage Company. The Radio Act of 1927 under which the Bond & Mortgage Company received its license which was later revoked required that any license should waive

> "Any right to any claim for any particular frequency or wave length or of the ether as against the regulatory power of the United States because of the previous use of the same."

The Puerto Rican statute served notice upon applicants for a distiller's or rectifier's permit that they could not use foreign labels and by accepting a permit with such notice, applicants waived any right to attack those provisions of the statute.

The petitioner knew when it applied for and received the permit that as the law then stood, it could not use the Bacardi labels because of the provisions just quoted. Moreover, the petitioner knew that the permit issued to it was subject to the laws and rules in force at the time of its issuance, or which might be enacted in the future, for aside from general principles of law by which it would be bound, these facts were plainly stated in the permit. This permit, issued on July 20, 1936, reads as follows:

> "This permit is conditioned to the compliance with the provisions of the Alcoholic Beverages Law of Puerto Rico and of all the Rules applicable in accordance with the law now in force or which may be in force in the future, and in accordance with the Federal Laws and Regulations applicable thereto, and shall be in force from the date of its issuance and until it may be suspended, revoked, annulled, voluntarily surrendered, or that may be terminated by virtue of the provisions of the Law or Regulations.
>
> This permit is personal and untransferable" (R. 288).

The petitioner applied for and accepted this permit which conferred upon it the most valuable right which lay

within the power of the Insular Government to grant, so far as the distillation of rum was concerned. It is thus in the position of having obtained the greatest advantages and benefits which the Act can confer. Having benefited by the Act to that extent, however, the petitioner now says that it must not be bound by those parts of the Act which it finds onerous. Petitioner contends that the Act, by the limitations placed on manufacturing under certain labels and shipment in bulk, violates the due process and equal protection clauses of the Fourteenth and Fifth Amendments and the Commerce clause of the Constitution of the United States. When a similar position was taken by Pierce Oil Company in the case of *Pierce Oil Co.* v. *Phoenix Refining Co.*, 259 U. S. 125 (1922), the Court remarked at page 128:

> "When the large discretion which the State had to impose terms upon this foreign corporation as a condition of permitting it to engage in wholly intra-state business is considered (citing cases), the contention that this order, of a tribunal to the jurisdiction of which the company voluntarily submitted itself, made after notice and upon full hearing, deprives it of its property without due process of law must be pronounced futile to the point almost of being frivolous."

The so-called burdens of which the petitioner complains are no greater than those which must be borne by all the distillers and rectifiers of rum in Puerto Rico. None of them may defy the labelling provisions of the statute or the limitations placed on sales in bulk, and neither may petitioner. If, in requiring the petitioner to do or refrain from doing what *all* others must do, the law forbids the petitioner to do something which it thinks would be of great value to it, that does not result in imposing a greater bur-

den on petitioner than the others. It may result in causing the petitioner to change its plans of using the Bacardi labels on rum manufactured in Puerto Rico, but so would an act prohibiting the distillation of rum, and none would question that such an act would be valid.

The petitioner was not in the helpless condition of being forced to accept the permit the conditions attached or else go out of business because there was no proceeding open to petitioner whereby "it adequately could have avoided evils that made it practically impossible not to comply with the terms of the law." (*Union Pacific Railroad Company* v. *Public Service Commission,* 248 U. S. 67, 70.) Under the Federal Declaratory Judgment Act (Judicial Code, sec. 274 (d); U. S. C. 400) the petitioner could have obtained a binding ruling as to whether or not the provisions it now assails were valid. It could have done all this before it distilled or rectified one drop of rum. It preferred, however, to invest over $500,000 after the law went into effect and to distill great quantities of rum under authority of the statutes it now attacks, taking its chances on having the law declared invalid. These operations have at all times been conducted by petitioner at a large profit, the average profit being $5 per case or at the rate of 10,000 cases shipped per month, a profit of $50,000 per month (R. 146). After having done all this, the petitioner then sought an injunction and a declaratory ruling. Having accepted the benefits, it may not now challenge the constitutionality of sections which it considers onerous. *Booth Fisheries Company* v. *Industrial Commission of Wisconsin,* 271 U. S. 208.

POINT II.

The provisions of Act No. 6 as amended by Act No. 149, which prohibit the use of certain trade marks and corporate names, do not offend against the due process clause of the Constitution of the United States nor of the Organic Act of Puerto Rico.

A. There is no taking of property.

The Puerto Rican law does not deny petitioner the right to do business in Puerto Rico nor to sell lawfully distilled rum under the Bacardi trade name; it does deny to the petitioner and to all others a permit to distill liquor if they intend to use internationally known trade names or trade-marks not used in Puerto Rico before February 1, 1936.

Denial of the right to do business under a particular trade-mark does not violate the due process clause. Petitioner may have a vested right to the Bacardi trade name, but it has no vested right to do business under it. A trade name in and of itself is not a property right.

> "There is no such thing as property in a trade-mark except as a right appurtenant to an established business or trade in connection with which the mark is employed. The law of trade-marks is but a part of the broader law of unfair competition; the right to a particular mark grows out of its use, not its mere adoption; its function is simply to designate the goods as the product of a particular trader and to protect his good will against the sale of another's product as his; and it is not the subject of property except in connection with an existing business."
>
> *United Drug Company* v. *Rectanus,* 248 U. S. 90, 97.

The fact that petitioner is an assignee of the trade name "Bacardi" and has registered said trade name in Cuba and in the United States does not give to it the privilege of engaging in business wheresoever it wishes. It is a well established prerogative of a State or Country to deny to a foreign corporation the privilege of doing local business. It is not necessary to outlaw the type of business. *Bank of Augusta* v. *Earle,* 13 Pet. 519; *Washington ex rel. Bond & Goodwin & Tucker, Inc.,* v. *Superior Court of Washington for Spokane County,* 289 U. S. 361. Even where a license has been granted it may be revoked. *Premier-Pabst Sales Co.* v. *Grosscup,* 298 U. S. 226.

The legislative power to prohibit involves a wide discretion as to the conditions which may be imposed in lieu of total prohibition. Since the conditions imposed by Act No. 6 as amended by Act No. 149 do not involve a taking of property, the due process clause is not violated.

B. The contested statute may be sustained as a valid exercise of the Police Power.

1. The police power and its free exercise in the legislative discretion is one of the attributes of the Legislature of Puerto Rico whose legislative powers extend to "all matters of a legislative character, not locally inapplicable" (Organic Act of Puero Rico, Sec. 37); and except insofar as it is limited by the Organic Act, the Constitution of the United States or is subject to the power of Congress to enact overriding legislation, is as plenary as that of the States. *Puerto Rico* v. *The Shell Co.,* 302 U. S. 253.

The grant of "all local legislative power in Puerto Rico," to "extend to all matters of a legislative character not locally inapplicable," invested that Legislature with all the powers (except as specifically limited by the Act)

habitually understood to be granted to, and exercised by, the legislatures of other Territories; that is to say, under the controlling decisions of this court, with substantially all the local legislative powers habitually exercised by the Legislatures of the States. This court has said:

> "It may be justly asserted that Puerto Rico is a completely organized territory, although not a territory incorporated into the United States, and that there is no reason why Puerto Rico should not be held to be such a territory." *Kopel* v. *Bingham,* 211 U. S. 468, 476 (Fuller, Ch. J.), quoted by Chief Justice White in the opinion of the court in *People of Puerto Rico* v. *Rosaly,* 227 U. S. 270, 274.

The Organic Act for Puerto Rico creates a completely organized territorial government, with legislative, executive, and judicial departments, modeled upon the distribution of powers in the federal government itself:

> "A government conforming to the American system, with defined and divided powers, legislative, executive and judicial."
>
> *People of Puerto Rico* v. *Rosaly, supra,* 227 U. S. 270, 277 (White, Ch. J.).

2. The police power comprehends legislation designed to promote the public welfare and general prosperity. The Fifth and Fourteenth Amendments do not prohibit legislative regulations for the public welfare, but merely require that the end shall be accomplished by methods consistent with due process. *Nebbia* v. *New York,* 291 U. S. 502; *West Coast Hotel* v. *Parrish,* 300 U. S. 379. In *Nebbia* v. *New York, supra,* at page 525, the Court said:

> "The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action,

> do not prohibit governmental regulations for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts."

Even the fact that police regulations may prevent the enjoyment of rights in property without providing compensation does not necessarily render them violative of the due process clause. *Chicago & Alton R. R. Co.* v. *Transbarger,* 238 U. S. 67; *Euclid* v. *Ambler Co.,* 272 U. S. 365. Regulation when it is a proper exercise of the police power is due process. *West Coast Hotel Co.* v. *Parrish,* 300 U. S. 379.

The police power is very broad and capable of meeting new conditions. *Barbier* v. *Connolly,* 113 U. S. 27; *Munn* v. *Illinois,* 94 U. S. 113; *Ziffrin* v. *Reeves,* 308 U. S. 132. It is not limited to legislation designed to promote the public health, safety or morals. In *Sligh* v. *Kirkwood,* 237 U. S. 52, legislation designed to protect the Florida citrus fruit industry was upheld. Florida passed a statute which made it a criminal offense to deliver for shipment in interstate commerce citrus fruits then and there immature and unfit for consumption. In sustaining this statute as a proper exercise of the police power of the State of Florida, the Court said, at page 61:

"We may take judicial notice of the fact that the raising of citrus fruits is one of the great industries of the State of Florida. It was competent for the legislature to find that it was essential for the success of that industry that its reputation be preserved in other States wherein such fruits find their most extensive market. The shipment of fruits, so immature as to be unfit for consumption, and consequently injurious to the health of the purchaser, would not be otherwise than a serious injury to the local trade, and would certainly affect the successful conduct of such business within the State. The protection of the State's reputation in foreign markets, with the consequent beneficial effect upon a great home industry, may have been within the legislative intent, and it certainly could not be said that this legislation has no reasonable relation to the accomplishment of that purpose."

The police power is often used to promulgate and make provisions for the carrying out of a program designed to promote the general welfare. Thus, the power to regulate the manufacture and sale of goods and particularly of certain kinds of goods, the encouragement of the manufacture of which is believed by the Legislature to be in the public interest, is one of the police powers. It has been so recognized in innumerable cases raising the question of whether or not such regulations entail deprivation of property without due process. It includes the right to legislate for the purpose of protecting and fostering home industries, which is well illustrated by the enactment, and the upholding of the validity of the various acts which discriminate against oleomargarine for the purpose of protecting the local dairy industry. *Capital City Dairy Co.* v. *Ohio,* 183 U. S. 238; *Powell* v. *Pennsylvania,* 127 U. S. 678.

Legislation designed to benefit local insurance agents was upheld last term in *Osborn* v. *Ozlin*, 310 U. S. 53. An analogy may be drawn between the legislation passed on in that case and the Puerto Rican statute by which Puerto Rico endeavors to protect its distilleries financed with local capital from the competition of foreign trade names. Local insurance agents were losing business to wholesale insurance brokers who through the process of pooling risks, were able to obtain cheaper rates from the insurance companies, and reduced commissions to the customer. Since these brokers are for the most part established in the large commercial centers, the advantages which they offered drew the Virginia business of interstate enterprises away from local agents. To meet this situation, Virginia passed a statute which forbade the writing of contracts of insurance or of surety by companies authorized to do business within that commonwealth "except through regularly constituted and registered resident agents or agencies of such companies." Such resident agents "shall be entitled to and shall receive the usual and customary commission allowed on such contracts," and may not share more than half of this commission with a non-resident broker. Disobedience of these provisions might entail a fine or revocation of the corporate license in Virginia, or both.

The Puerto Rican legislature was similarly motivated. It desired to protect its liquor industry which, since the repeal of prohibition, had been revived by the expenditure of local capital—protect it from the competition of foreign trade names. The use of foreign names would in no way contribute to the development of the Puerto Rican industry by local interests. The only interest which foreign capital would have in locating in Puerto Rico would be to evade the payment of the tariff and at the same time capitalize

upon the notoriety of brands or trade-names. Any change in the tariff situation would result in the foreign industry leaving the island.

3. The prohibition against the use on containers of Puerto Rican rum of labels famous because of their long continued use on rum distilled in other countries, is a measure well adopted to protect the rum industry of Puerto Rico from unfair competition in the local and continental United States market and it is not arbitrary. There is nothing more drastic in this prohibition than in the statute considered in *Osborn* v. *Ozlin, supra;* also, Cf. *Premier-Pabst Brewing Co.* v. *Grosscup,* 298 U. S. 226. Statutes designed to encourage the home industry by burdening and thus discouraging the importation of liquors and beer from other states have been enacted by the legislatures of California, Minnesota, and Michigan and have been upheld by the Supreme Court. *State Board* v. *Young's Market Co.,* 299 U. S. 59; *Mahoney* v. *Triner Corp.,* 304 U. S. 401. It is merely the means adopted by the Puerto Rican Legislature which differs from the statutes of the above mentioned States. The design and intent are the same, and represent the exercise of the same legislative power.

The record discloses an abundance of facts upon which the legislature could base the policy which it adopted. These facts were a matter of common knowledge in the rum industry of Puerto Rico and were laid before the Legislature of Puerto Rico in the form of a Memorial (R. 39-60). It is fair to presume that the Legislature was familiar with these facts so presented.

The more salient of these facts may be summarized as follows:

Since the repeal of prohibition the local liquor industry of Puerto Rico has been revived. Owing to the long years of prohibition, no one of the new or revived companies enjoyed the reputation in the markets of the United States that was possessed by certain other established name brands of foreign countries. This advantage was equalized by the import duties imposed upon liquors imported from foreign countries. This tariff differential amounted to $4.80 per case (R. 39). By underselling foreign brands, competition was possible, but a different situation was presented when foreign capital undertook to produce liquor in Puerto Rico under famous trade names so as to avoid payment of the import duty. It was to protect the renascent liquor industry of Puerto Rico from such competition that the present law was passed.

The testimony in this case, given moreover by petitioner's own witnesses, shows conclusively that in legislating with regard to labels and trade names the Legislature acted with full knowledge and understanding of the problems presented and adopted a realistic approach to their solution. In view of the situation presented, the law cannot be called an arbitrary exercise of the police power.

C. Aside from the question of constitutionality, the courts are unauthorized to deal with the wisdom of a policy adopted by the legislature.

There is no rule of constitutional law more firmly established than that which holds that where the power exists to legislate, it is for the Legislature to decide whether the power shall be used and the method which shall be used to accomplish the desired result. It is beyond the judicial competence to evaluate legislation from the point of view of necessity, wisdom, or congruity.

> "We need not labor the point, long settled, that where legislative action is within the scope of the police power, fairly debatable questions as to its reasonableness, wisdom and propriety are not for the determination of the courts, but for that of the legislative body on which rests the duty and responsibility of decision."
>
> *Standard Oil Co.* v. *Marysville,* 279 U. S. 582, 584.

In one of the most authoritative cases on the subject, one which has been cited by this Court and by other courts time and time again, the Court, speaking through Mr. Justice Hughes, said:

> "Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and *the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance.*" (Italics supplied.)
>
> *Chicago, Burlington & Quincy Railroad Co.* v. *McGuire,* 219 U. S. 549, 569.

The rule applies here. The Puerto Rican legislature, conceiving that the encouragement of the rum industry would be beneficial, enacted statutes to accomplish that end. The provision concerning the use of foreign trade-names and trade-marks is a part of that program. Whether it is the best means for the accomplishment of the purpose, or whether it will accomplish the purpose at all, is not for the courts to say. It is a determination which rests solely with the legislature.

POINT III.

The statutes do not deny petitioner the equal protection of the law.

Petitioner, in its brief (pp. 36-48) contends that the portion of the assailed statute which prohibits the use of the Bacardi labels, denies petitioner the equal protection of the laws. Petitioner bases its argument on the premise that the law was aimed at and affects petitioner only.

The Circuit Court of Appeals' decision on this point is clearly correct. The Court said (R. 442):

> "We think the court's ruling that the statutes are invalid as constituting a denial of the equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee was the only manufacturer affected by the particular statutory provisions here considered. But they applied to all who might later engage in the business. The clause in the Act permitting continuance of the use of labels of brands already established in Puerto Rico prior to February 1, 1936, does not unduly discriminate against foreign corporations which had not entered the field before that time."

This argument of the petitioner is based upon (1) a misunderstanding of the provisions and intent of the law, and (2) a misunderstanding of the scope of the law.

A. The section of the statute here considered is concerned with LABELS, not with manufacturers.

Petitioner's argument proceeds upon the theory that the legislation applies only to foreign manufacturers. This is wholly erroneous. The legislation forbids the use of foreign labels by any manufacturer.

Section 41(g) of Act 115 (the first Act), provided:

> "No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trademark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; *provided,* (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand trade name, or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured, in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico."

The next Act (No. 6) in section 44 provided:

> "No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formally known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *provided,* That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico, prior to the approval of this Act; and Provided, further, That distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing

the information prescribed by law and the regulations of the Treasurer."

The last Act (No. 149) reads as follows:

"No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; *provided,* That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

Each of these Acts has the same initial wording "No holder of a permit," and then proceeds to forbid such holder to distill or bottle rum which shall carry the forbidden designations. There is here no discrimination against foreign manufacturers. It clearly applies to all manufacturers of rum in the Island. It applies directly to the intervenor-respondent and to every other domestic distiller. This is readily seen if it be assumed that the intervenor-respondent has entered into a contract with Fred L. Myers & Sons—makers of the famous "Planter's Punch" Jamaica rum—similar to that existing between the petitioner and Compania Ron Bacardi S. A. Clearly the intervenor-respondent would be bound by this law just as petitioner is, yet it is not a foreign corporation.

The intent and effect of the law is simply this: All rum distilled in Puerto Rico must not be marketed under labels and trade-names which are celebrated because of their prior use on rums manufactured in countries other than Puerto Rico. It is *all* rums, not some, but *all* to which this applies and it makes no difference whether it is distilled by domestic or foreign corporations. The domicile of the corporation is of no significance; the deciding factor is whether or not it is a label, trade-mark or trade name coming within the definition of the statute. It would be hard to conceive of a requirement which came closer to absolute equality.

B. The Classification being based on the difference between well-known and lesser known trade-marks and names, is a reasonable classification.

The difference between trade-marks and names which are well-known and those which are not is a difference which this court has twice recognized as being so substantial as to uphold legislation based on such difference.

In *Borden* v. *Ten Eyck,* 297 U. S. 251, the Court had under consideration the validity of an act of the New York Legislature, namely, the Milk Control Law, which provided for a differential of one cent between the prices of milk bearing well-known trade names and those bearing trade names which were not well known. It was contended that such a differential based upon an "arbitrary" classification denied the equal protection of the laws. It was urged that the classification was arbitrary because it put the appellant and other dealers who had well-advertised trade names in a single class solely by reason of the fact that their legitimate advertising had brought them good-will. The Court, however, held that since the differential had ex-

isted before the enactment of the legislation, and had been established because in the course of business it had been found that the dealers whose trade names were not well advertised could only meet the competition of those dealers with well-advertised names by under-selling them, that the Legislature was justified in perpetuating this classification.

In *Old Dearborn Co.* v. *Seagram Corporation,* 299 U. S. 183, the Court had under consideration the Fair Trade Act of Illinois which provided, among other things, that the resale price of goods identified by a trade-mark, brand or name, might be controlled by the manufacturer. Section 2 of the Act provided that wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in a contract made consistently with Section 1, whether or not the person doing so is or is not a party to the contract, shall constitute unfair competition, giving rise to a right of action in favor of anyone damaged thereby. Section 2 was challenged on the ground that it denied the equal protections of the laws. The Court disposed of this contention in the following words at page 197:

> "The contention that sec. 2 of the act denies the equal protection of the laws in violation of the Fourteenth Amendment proceeds upon the view that it confers a privilege upon the producers and owners of goods identified by trade-mark, brand or name, which it denies in the case of unidentified goods. As this Court many times has said, the equal protection clause does not preclude the states from resorting to classification for the purposes of legislation. It only requires that the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'

Colgate v. *Harvey*, 296 U. S. 404, 422, 423, and cases cited.

"Clearly, the challenged section of the Illinois act satisfies this test. *Enough appears already in this opinion to show the essential difference between trade-marked goods and others not so identified. The entire struggle to bring about the legislation such as the Illinois act embodies has been based upon this essential difference.*" (Italics supplied.)

In view of the foregoing, it is urged that there is a real and substantial difference between trade-marks and labels which are used for the first time outside of a small island in a market so vast as the continental United States, and labels which for many years have enjoyed a fame and notoriety by being used on products distributed in that market. This difference is one which can be recognized by a legislature in forming legislation intended to foster and encourage the new industry which produced the product bearing the comparatively unknown label. The fact that the challenged legislation prohibits the use of all foreign lables within the same class, does not bring such legislation within the condemnation of the equal protection clause as it merely treats all in the same class on the same basis. This is all that is required to satisfy the requirements of equal protection, because it is equality.

POINT IV.

The Puerto Rican law does not violate the treaty adopted by the Inter-American Convention for Trade-marks and Commercial Protection.

A. Neither the terms nor the intent of the Convention prohibit a local legislature from exercising its police powers.

The avowed purpose of the Convention was to negotiate

> "* * * for the protection of trade marks, trade names and for the repression of unfair competition and false indications of geographical origin" (Treaty Series No. 833, pp. 2-3).

The Convention intended to preserve the integrity of trade-marks and trade names from duplication and did not mean to guarantee to the holder of a trade-mark the right to do business wherever the holder determined, irrespective of local legislation. This was the interpretation of the Treaty which was adopted by the Circuit Court of Appeals.

> "Its purpose was to prevent piracy of trade-marks, a matter which is not here involved. It was not intended to have and does not have the effect of invalidating local laws and regulations of the type here in question." 109 F. (2d) 57, 64 (C. C. A. 1st 1940).

This interpretation, petitioner says, (Petitioner's brief, p. 30) depends "upon a narrow construction of the words of the treaty," although the treaty recites that it is undertaken in the "broadest scope". What the treaty recites is that the respective signatory governments "considering it necessary" to revise the existing "Convention for the

Protection of Commercial, Industrial and Agricultural Trade Marks and Commercial Names" and "animated by the desire to reconcile the different juridical systems which prevail in the several American Republics and convinced of the necessity of undertaking this work in its broadest scope, *with due regard for the respective national legislations* * * *." (Italics supplied.)

In other words, the various commissioners met to bring the then existing Convention down to date and to embody in the new Convention certain reforms, and they intended to undertake the work in its "broadest scope" but always "with due regard for the respective national legislations." The recitation in the treaty concerning "broadest scope" does not require that the provisions be extended far beyond the meaning they would have under the general canons for interpreting treaties.

There is a great deal of loose talk in petitioner's brief about "protection" which petitioner argues is given to trade-marks and trade names by the treaty. On page 29 of petitioner's brief we are told that "Articles 3 and 11 taken together" are evidence of an intention that the owner of a trade-mark "shall receive the same protection * * * that he is entitled to claim in his own country." On page 30, after making the claim that the Puerto Rican statutes bring about unfair competition "as though the competitors by law, were made free to use petitioner's marks" the argument runs: "In both cases petitioner needs and can rely upon the 'protection' which the treaty explicitly gives." Again on page 30 it is stated: "By no stretch of the imagination can the United States be said to fulfill its treaty obligation to *protect* these marks, when one of its territories seizes upon the very fact of their foreign origin and use to impose penalties."

Obviously, petitioner is seeking to have the terms "protect" and "protection" understood in the broad sense of being defended from all harm or interference. The right upon which petitioner insists, however, is one given by a treaty, not the dictionary or the common understanding of mankind. "To determine the nature and extent of the right we must look to the treaty which created it," Stone J. in *Factor* v. *Laubenheimer*, 290 U. S. 276, 287.

With this admonition of the Court in mind, intervenor-respondent sets forth below those portions of the Convention and Protocol which use the words "protect" and "protection".

The Convention provides as follows:

"Chapter II"

"Article 7. Any owner of a mark *protected* in one of the Contracting States in accordance with its domestic law, who may know that some other person is using or applying to register or deposit an interfering mark in any other of the Contracting States, shall have the right to oppose such use, registration or deposit and shall have the right to employ all legal means, procedure or recourse provided in the country in which such interfering mark is being used or where its registration or deposit is being sought, and upon proof that the person who is using such mark or applying to register or deposit it, had knowledge of the existence and continuous use in any of the Contracting States of the mark on which opposition is based upon goods of the same class, the opposer may claim for himself the preferential right to use such mark in the country where the opposition is made or priority to register or deposit it in such country, upon compliance with the requirements established by the domestic legislation in such country and by this Convention.

"Article 8. When the owner of a mark seeks the registration or deposit of the mark in a Contracting State other than that of origin of the mark and such registration or deposit is refused because of the previous registration or deposit of an interfering mark, he shall have the right to apply for and obtain the cancellation or annulment of the interfering mark upon proving, in accordance with the legal procedure of the country in which cancellation is sought, the stipulations in Paragraph (a) and those of either Paragraph (b) or (c) below:

"(a) That he enjoyed *legal protection* for his mark in another of the Contracting States prior to the date of the application for the registration or deposit which he seeks to cancel; * * *.

"Article 10. The period of *protection* granted to marks registered, deposited or renewed under this Convention, shall be the period fixed by the laws of the State in which registration, deposit or renewal is made at the time when made. * * *.

"Article 12. Any registration or deposit which has been effected in one of the Contracting States, or any pending application for registration or deposit, made by an agent, representative or customer of the owner of a mark in which a right has been acquired in another Contracting State through its registration, prior application or use, shall give to the original owner the right to demand its cancellation or refusal in accordance with the provisions of this Convention and to request and obtain the *protection* for himself, it being considered that such *protection* shall revert to the date of the application of the mark so denied or cancelled.

"Article 13. The use of a trade mark by its owner in a form different in minor or non-substantial elements from the form in which the mark has been

registered in any of the Contracting States, shall not entail forfeiture of the registration or impair the *protection* of the mark. * * *

"Chapter III

"Article 14. Trade names or commercial names of persons entitled to the benefits of this Convention shall be *protected* in all the Contracting States. Such *protection* shall be enjoyed without necessity of deposit or registration, whether or not the name forms part of a trade mark.

"Article 16. The *protection* which this Convention affords to commercial names shall be:

"(a) to prohibit the use or adoption of a commercial name identical with or deceptively similar to one legally adopted and previously used by another engaged in the same business in any of the Contracting States; and

"(b) to prohibit the use, registration or filing of a trade mark the distinguishing elements of which consist of the whole or an essential part of a commercial name legally adopted and previously used by another owner domiciled or established in any of the Contracting States, engaged in the manufacture, sale or production of products or merchandise of the same kind as those for which the trade mark is intended.

"Article 19. The *protection* of commercial names shall be given in accordance with the internal legislation and by the terms of this Convention, and in all cases where the internal legislation permits, by the competent governmental or administrative authorities whenever they have knowledge or reliable proof of their legal existence and use, or otherwise upon the motion of any interested party."

The Protocol contains the following provisions concerning "protect" or "protection":

"Article 1. Natural or juridical persons domiciled in or those who possess a manufacturing or commercial establishment or an agricultural enterprise in any of the States that may have ratified or adhered to the present Protocol, may obtain the *protection* of their trade marks through the registration of such marks in the Inter-American Trade Mark Bureau.

"Article 2. The owner of a mark registered or deposited in one of the Contracting States who desires to register it in any of the other Contracting States, shall file an application to this effect in the office of the country of original registration which office shall transmit it to the Inter-American Trade Mark Bureau, complying with the regulations. A postal money order or draft on a bank of recognized standing, in the amount of $50.00, as a fee for the Inter-American Trade Mark Bureau, plus the amount of the fees required by the national law of each of the countries in which he desires to obtain *protection* for his mark, shall accompany such application.

"Article 3. Immediately on receipt of the application for the registration of a mark, and on determining that it fulfills all the requirements, the Inter-American Trade Mark Bureau shall issue a certificate and shall transmit by registered mail copies of the same accompanied by a money order for the amount required by the respective Offices of the States in which *protection* is desired. In the case of adhesions or ratifications of additional states after the registration of a mark, the Inter-American Bureau shall, through the respective offices of their countries, inform the proprietors of marks regis-

tered through the Bureau, of said adhesions or ratifications, informing them of the right that they have to register their marks in the new adhering or ratifying States, in which registration shall be effected in the manner above mentioned.

"Article 4. * * * In case *protection* is granted to the mark, it shall issue a certificate of registration in which shall be indicated the legal period of registration; which certificate shall be issued with the same formalities as national certificates and shall have the same effect in so far as ownership of the mark is concerned. This certificate of registration shall be sent to the Inter-American Trade Mark Bureau, which shall transmit it to the proprietor of the mark through the proper office of the country of origin.

"If, within seven months after the receipt by a Contracting State of an application for the *protection* of a trade mark transmitted by the Inter-American Trade Mark Bureau, the administration of such State does not communicate to the Bureau notice of refusal of *protection* based on the provisions of the General Inter-American Convention for Trade Mark and Commercial Protection such mark shall be considered as registered and the Inter-American Trade Mark Bureau shall so communicate to the applicant through the country of origin, and shall issue a special certificate which shall have the same force and legal value as a national certificate.

"In case *protection* of a mark is refused in accordance with the provisions of the internal legislation of a State or of the General Inter-American Convention for Trade Mark and Commercial Protection, the applicant may have the same recourse which the respective laws grant to the citizens of the state refusing protection. The period within which the recourse and actions granted by national laws may

be exercised shall begin four months after receipt by the Inter-American Trade Mark Bureau of the notice of refusal.

"The Inter-American registration of a trade mark communicated to the Contracting States, which may already enjoy *protection* in such States shall replace any other registration of the same mark effected previously by any other means, without prejudice to the rights already acquired by national registration.

"Article 10. The owner of a trade mark may at any time relinquish *protection* in one or several of the Contracting States, by means of a notice sent to the Administration of the country of origin of the mark, to be communicated to the Inter-American Bureau, which in turn shall notify the countries concerned."

In an annex to the Protocol we find the following:

"Article 1. The application to obtain *protection* under the Protocol of which the present Annex is a part shall be made by the owner of the mark or his legal representative to the administration of the State in which the mark has been originally registered or deposited in accordance with the provisions in force in that State, accompanied by a money order or draft payable to the Director of the Inter-American Trade Mark Bureau in the sum required by this Protocol. The application and money order shall be accompanied by an electrotype (10 x 10 centimeters) of the mark reproducing it as registered in the State of original registration."

It is submitted that the foregoing sections of the Convention and Protocol clearly demonstrate that the protection which the treaty affords is that protection which comes from registration of the trade-mark; that is against dupli-

cation and piracy. In none of those sections is there disclosed, either by the terms employed or by the general intent gathered from a consideration of all the sections, that anything more was intended.

Just as the meaning of protection is to be found only in the general terms of the treaty, so, also the meaning of unfair competition is set forth in Article 21. This Article contains a full statement of what is meant by unfair competition and it is useless to attempt to read any special meaning into the term "unfair competition," just as it is futile to attempt to give such a broad meaning to the term "protection" as petitioner contends for. Article 21 reads as follows:

"Article 21.

The following are declared to be acts of unfair competition and unless otherwise effectively dealt with under the domestic laws of the Contracting States shall be repressed under the provisions of this Convention:

(a) Acts calculated directly or indirectly to represent that the goods or business of a manufacturer, industrialist, merchant or agriculturist, are the goods or business of another manufacturer, industrialist, merchant or agriculturist or any of the other Contracting States, whether such representation be made by the appropriation or simulation of trade-marks, symbols, distinctive names, the imitation of labels, wrappers, containers, commercial names, or other means of identification;

(b) The use of false descriptions of goods by words, symbols or other means tending to deceive the public in the country where the acts occur, with respect to the nature, quality, or utility of the goods;

(c) The use of false indications or geographical origin or source of goods, by words, symbols, or

other means which tend in that respect to deceive the public in the country in which these acts occur;

(d) To sell, or offer for sale to the public an article, product or merchandise of such form or appearance that even though it does not bear directly or indirectly an indication of origin or source, gives or produces, either by pictures, ornaments or language employed in the text, the impression of being a product, article or commodity originating, manufactured or produced in one of the other Contracting States;

(e) Any other act or deed contrary to good faith in industrial, commercial or agricultural matters, which, because of its nature or purpose, may be considered analogous or similar to those above mentioned."

The Puerto Rican Law does not permit or open the road to the usurpation or simulation of trade names or symbols registered in any of the Contracting States. The contested law provides that no person shall engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits in Puerto Rico unless such person has a permit; and that holders of permits will not be permitted to distill liquor under trade names or trade-marks of a specified classification. This in no way violates the terms of the treaty.

B. The construction contended for by the petitioner conflicts with well-established principles.

Petitioner claims that under the terms of the treaty, there may be no discrimination against trade-marks of nationals of the Contracting Nations (Petitioner's Brief, p. 24). Petitioner construes the language of the treaty to mean that the owner of a trade-mark shall receive the

same protection and have the same latitude in dealing with the mark in all countries that are parties to the treaty, that such owner is entitled to claim in his own country (Petitioner's Brief, p. 29). Relying upon this construction of the treaty, petitioner concludes that a local legislature cannot limit the use of a trade-mark or discriminate against it.

This construction cannot be reconciled with the understanding that the courts of this country have of the function of trade-marks and the effect to be given to their registration. It is accepted by our courts that the function of a trade-mark is to designate the goods as the product of a particular trader and to protect his good-will against the sale of another product as his. *United Drug Co.* v. *Rectanus Co.*, 248 U. S. 90, 97; *Ph. Schneider Brewing Co.* v. *Century Distilling Co.*, 107 F. (2d) 699, 703. It is also accepted that the statutes providing for registration and assignment of trade-marks neither confer nor limit substantive rights, which are determined wholly by common law principles, but merely confer certain procedural advantages on the registrant.

In view of this understanding of our courts, the construction of the petitioner, which, as has been developed at pages 38-39 of this brief, cannot be found in the words of the Treaty, should not be written into the Treaty. In the absence of explicit language, unusual constructions should be avoided.

It is a well-established prerogative of a state to deny to any corporation the privilege of doing local business, and in order to do so, it is not necessary to outlaw the type of business. *Premier-Pabst Sales Co.* v. *Grosscup*, 298 U. S. 226; *Washington ex rel. Bond & Goodwin & Tucker, Inc.* v. *Superior Court of Washington for Spokane County,*

289 U. S. 361; *Bank of Augusta* v. *Earle*, 13 Pet. 519. *A fortiori*, a sovereign country has the same prerogative.

If the position of petitioner is adopted, this prerogative is destroyed. By the simple expedient of registering a trade-mark in one of the countries which has adopted the Treaty, a corporation could force itself upon any Contracting Country which has denied it the privilege of doing local business. No other Signatory Country could discriminate against this corporation because it would possess a registered trade name and to discriminate against the corporation would also be a discrimination against the trade name. If the corporation is not permitted to do local business in that country, the trade name is proportionately of less value to it. To give the "same latitude in dealing with the mark in all other countries that are parties to the treaty, that he is entitled to claim in his own country" (Petitioner's Brief, p. 29), permission must be granted to the owner to do business under it in the same manner as the owner might conduct business in the country in which it had registered the mark.

It is not proper to assume that the Contracting Countries intended to produce this method of circumventing their control over local business. It is evident that when the Convention said "Every mark duly registered or legally protected in one of the Contracting States shall be admitted to registration or deposit and legally protected in other Contracting States" (Article 3), it was referring to protection against piracy of the mark.

That is was never intended that the Convention should do more than extend to nationals of the signatory countries the protection which each country gives to the trademarks of its own nationals is shown by Article I which reads:

> "The Contracting States bind themselves to grant to the nationals of the other Contracting States and to domiciled foreigners who own a manufacturing or commercial establishment or an agricultural development in any of the States which have ratified or adhered to the present Convention the same rights and remedies which their laws extend to their own nationals or domiciled persons with respect to trade marks, trade names, and the repression of unfair competition and false indications of geographical origin or source."

Respondent denies that the Puerto Rican Law discriminated against trade-marks because of origin. The only discrimination is against trade-marks used outside of Puerto Rico or continental United States. This discrimination against use affects every individual and corporation whether a citizen of or incorporated in Puerto Rico, one of the States of the United States or elsewhere, and regardless of where the trade-mark originated.

Where the construction of a Treaty urged upon the Court would contravene established principles of law or justice, there has been evidenced an inclination to refuse such a construction for one more in keeping with the usual concepts of our jurisprudence. *Sanchez* v. *United States*, 216 U. S. 167.

A group of cases involving extraordinary rights conferred by state law, the benefit of which was limited to residents or citizens, shows a further application of the principle that the interest of a state in dealing with its own citizens and property, may influence the process of treaty interpretation.

In *Maiorano* v. *Baltimore & Ohio Railroad*, 213 U. S. 268, plaintiff, a resident of Italy, sued to recover for the

negligent homicide of her husband under the Pennsylvania Wrongful Death Act. The State Court having considered the Act as not permitting recovery by non-resident aliens, plaintiff appealed to the Supreme Court, claiming that this ruling denied to Italians who were non-residents, the equal "protection and security for their person" guaranteed by a treaty with Italy. The Court held that even though some measure of protection was actually and necessarily avoided by the statute and denied to plaintiff's husband in this case, still the protection and security involved were so "indirect and remote that the Contracting Powers cannot fairly be thought to have had them in contemplation."

When treaty provisions are considered in conjunction with the police powers of the states, a very strict construction is adopted. In *Patsone* v. *Pennsylvania,* 232 U. S. 138, an Italian citizen residing in Pennsylvania, appealed from a conviction for the offense of owning a shotgun in violation of a state law forbidding aliens to shoot wild birds or animals, except in defense of persons or property, and, to that end, forbidding the possession of shotguns or rifles. His contention was that the law violated the statute and the treaty with Italy which was considered in the *Maiorano* case, *supra.* After holding that the classification and means adopted to safeguard the State's interest in the preservation of game were reasonable under the Fourteenth Amendment, the Court gave scant attention to the treaty question.

In *Ohio ex rel. Clarke* v. *Deckebach,* 274 U. S. 392, the Supreme Court held that the treaty with Great Britain, which gave merchants and traders of that nation the right to carry on their commerce with the United States, did not invalidate a Cincinnati ordinance forbidding the operation of poolrooms by aliens as applied to the relator, a British citizen.

Puerto Rico has legislated to protect its revived liquor industry. In so doing it has exercised its police power. The express wording of the treaty does not forbid such legislation. The cases which have been set forth above are authority against stretching the wording of the treaty so as to bring the statute in conflict with it.

POINT V.

Neither the prohibition of the use of certain labels or trademarks nor the prohibition of the shipment or importation of rum in containers holding more than one gallon violate the Commerce Clause of the Federal Constitution.

A. The Commerce Clause does not extend to Puerto Rico.

The commerce clause gives Congress the power to "regulate commerce with foreign nations, among the several states and with the Indian Tribes." Art. I, Sec. 8, cl. 3. Puerto Rico is not a foreign nation; it is not a state, and most certainly it is not an Indian tribe.

The power of Congress to regulate the commerce between an insular possession and any other place does not derive from the commerce clause but from its general power over territory belonging to the United States given it by Article IV, Sec. 3, Cl. 2. *Ex parte Hanson,* 28 F. 127.

The Circuit Court of Appeals in the case at bar expressly held that the commerce clause does not extend to Puerto Rico:

> "* * * The commerce clause (U. S. C. A. Constitution, Article 1, Section 8, Clause 3) grants the Congress power 'To regulate Commerce with foreign Nations, and among the several States, and with the

> Indian Tribes.' By necessary implication, it prevents a state from regulating such commerce. But Puerto Rico is not a state. It is an organized Territory of the United States though not yet 'incorporated' into the Union, *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 58 S. Ct. 167, 82 L. Ed. 235 and the indubitable right of the Congress to regulate the commerce of Puerto Rico is founded on the Constitutional power 'to dispose of and make all needful Rules and Regulations respecting the Territory or Regulations respecting the Territory or other Property belonging to the United States.' (Constitution, Article IV, Section 3, Clause 2.) The power is in no direct sense dependent upon the Commerce clause which as this court has said 'does not extend to Puerto Rico'. *Lugo* v. *Suazo*, 1 Cir., 59 F. 2d 386, 390. Cf. *Inter-Island Steam Navigation Co.* v. *Hawaii*, 9 Cir., 96 F. 2d 412.
>
> "The decree of the District Court declaring such legislation unconstitutional can not be affirmed upon the ground that the Puerto Rican statutes violate the commerce clause of the Constitution of the United States" (R. 435, 436).

Since the clause does not extend to Puerto Rico, it is obvious that the enactments of the Puerto Rican Legislature do not violate it.

B. Even if this Court holds that the Commerce Clause does extend to Puerto Rico, still, the contested statute does not violate it.

1. The prohibition of distillation under a specified classification of trade names has no more extraterritorial effect than a total prohibition. If no liquor can be produced, none can be sold. The fact that a distiller located in one state sells his product in another would not deny to the former the right to prohibit the distillation. The fact

that a distiller intends to transport beyond the state does not lessen the power of the state to control the manufacture. *Kidd* v. *Pearson,* 128 U. S. 1; *Hudson County Water Co.* v. *McCarter,* 209 U. S. 349.

2. The power of Congress over matters national in character does not prevent states from exercising their police power. *Ziffrin, Inc.,* v. *Reeves,* 308 U. S. 132. A State statute may take private property out of the commerce clause and may outlaw such private property in a proper exercise of the police power. *Sligh* v. *Kirkwood,* 237 U. S. 52. And in *Ziffrin, Inc.,* v. *Reeves,* at page 140, the Court said:

> "We cannot accept appellant's contention that because whiskey is intended for transportation beyond the state lines the distiller may disregard the inhibition of the statute by delivery to one not authorized to receive; that the carrier may set at naught inhibitions and transport contraband with impunity."

3. What is a proper exercise of the police power?

> "* * * The police power, in its broadest sense, includes all legislation and almost every function of civil government. *Barbier* v. *Connolly,* 113 U. S. 27. It is not subject to definite limitations, but is coextensive with the necessities of the case and the safeguards of public interest. *Camfield* v. *United States,* 167 U. S. 518, 524. It embraces regulations designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or the public health. *Chicago &c. Railway* v. *Drainage Commissioners,* 200 U. S. 561, 592. In one of the latest utterances of this court upon the subject, it

was said: 'Whether it is a valid exercise of the police power is a question in the case, and that power we have defined, as far as it is capable of being defined by general words, a number of times. It is not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals, and safety, but to those which promote the public convenience or the general prosperity.* * * And further, 'It is the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government.' *Eubank* v. *Richmond,* 226 U. S. 137, 142."

Sligh v. *Kirkwood,* 237 U. S. 52, 59.

In *Ziffrin, Inc.,* v. *Reeves,* 308 U. S. 132, the Supreme Court allowed Kentucky to prohibit the shipment of contraband liquor out of Kentucky and held valid a statute which declared liquor contraband upon delivery to an interstate carrier that did not possess a Transporter's License issued by Kentucky. This burden on shipment out of the state was sustained even though the result was to reduce the revenue of an established business with a large investment in Kentucky. Unquestionably this did affect interstate commerce, but the Court sustained the legislation as a proper exercise of the police power.

"Kentucky has seen fit to permit the manufacture of whiskey only upon condition that it be sold to an indicated class of customers and transported in definitely specified ways. These conditions are not unreasonable and are clearly appropriate for effectuating the policy of limiting traffic in order to minimize well known evils and secure payment of revenue. The statute declares whiskey removed from permitted channels contraband subject to immediate seizure. This is within the police power of

the State; and property so circumstanced cannot be regarded as a proper article of commerce'' (p. 139).

In *Sligh* v. *Kirkwood,* 237 U. S. 52, the Court held that it was within the police power of the State of Florida to make it a criminal offense to deliver for shipment in interstate commerce citrus fruits then and there immature and unfit for consumption. The legislation was recognized as a proper method of protecting the reputation of the State in foreign markets.

A limitation by the Puerto Rican statute upon shipment in bulk is a necessary part of the legislation enacted to preserve for the renascent liquor industry in Puerto Rico the protection afforded by the import duty on foreign liquor. Without such limitation there is danger that liquor distilled in Puerto Rico might be shipped in bulk to the United States and there bottled under internationally known trade names and sold free of import duty.

This legislation is within the range of the police power. The purpose back of the legislation differs little from that which motivated the legislature of the State of Florida. It has a reasonable relation to a legitimate purpose to be accomplished in its enactment, and whether such regulation is necessary in the public interest is primarily within the determination of the legislature.

The Puerto Rican statute does not come within that class of legislation condemned, because, though nominally of local concern, it is aimed primarily at interstate commerce. It was to end such practices that the commerce clause was adopted. See *South Carolina Highway Department* v. *Barnwell Brothers, Inc.,* 303 U. S. 177, and the cases cited at page 186. The Puerto Rican statute is dealing with a matter of local concern and to effect that purpose inci-

dentally affects interstate commerce. The local matter dealt with is the protection of a home industry which was at a standstill during the era of prohibition and now needs protection from companies which had not suffered the same set-back. There is no attempt to curtail or affect the production of liquor outside of Puerto Rico.

Petitioner relies heavily upon *Foster-Fountain Packing Company* v. *Haydel,* 278 U. S. 1, which held invalid a local regulation ostensibly designed to conserve a natural resource, but the purpose and effect of which was to benefit Louisiana enterprise *at the expense of businesses outside the State* and compel their removal to Louisiana. If held valid, the statute would have compelled a canning company operating in Mississippi to come to Louisiana or go out of business. In the case at bar, the statute has no such effect. True, it is designated to benefit the Puerto Rican liquor industry, but not at the expense of any business located outside of Puerto Rico. The Bacardi Corporation of America will not be forced out of business. The situation of all distilleries located outside of Puerto Rico remains the same after the enactment of the statute as before. The statute has no extraterritorial effect.

The *Foster* case was not followed in *Bayside Fish Company* v. *Gentry,* 297 U. S. 422. California prohibited the reduction of fish for fertilization purposes to an extent which might tend to deplete the species or result in waste or deterioration of fish. In respect to the canning of fish, the number of sardines per ten-ounce can was limited to eight fish and not less than one ounce of olive oil per can could be used in such canning. In upholding this legislation, the Supreme Court distinguished *Foster Packing Company* v. *Haydel* on the grounds that although the ostensible purpose of the Louisiana act was to conserve the raw shell

for local use, the real purpose was to bring about the removal of the packing and canning industries from Mississippi to Louisiana. On the other hand, the California act had no such extraterritorial effect; in purpose and in direct operation it was confined to a mere local activity, and if it affected interstate or foreign commerce the result was purely incidental.

The climate, water and location of Puerto Rico gives it an advantage in the distillation of rum which Puerto Rico is entitled to preserve and protect for the sole benefit of concerns using trade names indigenous to Puerto Rico or continental United States; and, provided that it does not discriminate against enterprises located outside of Puerto Rico, the commerce clause is not violated, though it may be incidentally affected. As has already been pointed out, outside businesses are not affected, except in that they will have to compete with Puerto Rican distilleries protected from foreign companies by the import duty, from distilleries in continental United States. In *South Carolina Highway Department* v. *Barnwell, Inc.*, 303 U. S. 177, legislation was held valid though it affected interstate commerce. The Court said at page 189:

> "The nature of the authority of the state over its own highways has often been pointed out by this Court. It may not, under the guise of regulation, discriminate against interstate commerce. But 'In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens.' *Morris* v. *Duby*, 274 U. S. 135, 143. This formulation has been repeatedly affirmed, *Clark* v.

Poor, 274 U. S. 554, 557; *Sprout* v. *South Bend*, 277 U. S. 163, 169; *Sproles* v. *Binford*, 286 U. S. 374, 389, 390; *cf. Morf* v. *Bingaman*, 298 U. S. 407, and never disapproved. This Court has often sustained the exercise of that power although it has burdened or impeded interstate commerce. It has upheld weight limitations lower than those presently imposed, applied alike to motor traffic moving interstate and intrastate. *Morris* v. *Duby, supra; Sproles* v. *Binford, supra.* Restrictions favoring passenger traffic over the carriage of interstate merchandise by truck have been similarly sustained. *Sproles* v. *Binford, supra; Bradley* v. *Public Utilities Comm'n*, 289 U. S. 92, as has the exaction of a reasonable fee for the use of the highways. *Hendrick* v. *Maryland*, 235 U. S. 610; *Kane* v. *New Jersey*, 242 U. S. 160; *Interstate Busses Corp.* v. *Blodgett*, 276 U. S. 245; *Morf.* v. *Bingaman, supra; cf. Ingels* v. *Morf*, 300 U. S. 290.

"In each of these cases regulation involves a burden on interstate commerce. But so long as the state action does not discriminate, the burden is one which the Constitution permits because it is an inseparable incident of the exercise of a legislative authority, which, under the Constitution, has been left to the states."

The same principles apply here. If the prohibition against the shipment of rum in containers holding more than one gallon "involves a burden on interstate commerce" it is "an inseparable incident of the exercise of a legislative authority" which Puerto Rico undoubtedly has.

POINT VI.

There is no conflict with the Federal Alcohol Administration Act.

The Federal Alcohol Administration Act does not supersede or annul state or territorial legislation on the question of manufacture and sale of alcoholic liquors. If it were true, as the petitioner says at page 54 of its brief, that "The entire interstate and foreign commerce in rum is regulated by the Federal Alcohol Administration Act, which became law on August 29, 1935 and was amended June 26, 1936", then it is difficult to understand how this Court recognized the power of the State of Kentucky to impose limitations upon the shipment of whiskey out of Kentucky. This was the case of *Ziffrin, Inc.* v. *Reeves,* 308 U. S. 132, decided last term. Actually, Congress intended the Act to dovetail with proper state legislation. This is evident from the words of section 4 of the Act, wherein is a statement of who shall be entitled to permits:

> "Sec. 4. *Permits.*
>
> "(a) *Who entitled thereto.* The following persons shall, on application therefor, be entitled to a basic permit:
>
> • • • • • •
>
> "(2) Any other person unless the Administrator finds • • • (C) *that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.*" (Italics supplied.)

A further recognition of the power of the states to legislate in the field of intoxicating liquor is manifested by

the fact that the basic permits which the petitioner received are each:

> "Conditioned upon compliance with . . . the laws of all states in which you engage in business" (R. 272, 273).

The Circuit Court of Appeals decided that the Federal Act did not preclude state action and that the Puerto Rican statute did not conflict with the terms of the Federal Act.

> "As to labels, the Federal Alcohol Administration Act, aiming at unfair competition and other unlawful practices, forbids the introduction into interstate or foreign commerce of liquor unless labelled in accordance with regulations established by the Administration in such a way as to prevent deception of the consumer and the like. Such being the purpose of the Act, its effect was not to deprive the Legislature of Puerto Rico of the right to enact the territorial statute restricting the use of labels.
>
> "Nor does it seem to us correct to say, as does the appellee, that 'the Federal statute authorizes shipment in bulk in containers of more than one gallon.' What the statute does is to forbid the disposition of liquor in bulk except in pursuance of regulations of the Federal Alcohol Administration. We cannot read into this statute an intent upon the part of the Congress to bar the territorial statutes governing shipments in bulk.
>
> "Consistent with the view that the Federal Alcohol Administration Act was not intended to deprive territories of the right, in the exercise of their police powers, to limit the use of labels, or to limit the size of containers to be used under certain circumstances, is the form of permit received by the appellee, which is expressly 'conditioned upon compliance with the laws of all states' in which the applicant engages in

> business. We are concerned here not with Congressional power but with the question whether Congress has so exercised that power as to close the door to the territorial legislation here considered. In *McDermott* v. *Wisconsin*, 228 U. S. 115, 33 S. Ct. 431, 57 L. Ed. 754, 47 L. R. A., N. S., 984, Ann. Cas. 1915A, 39, on which the appellee relies, the right of a state to impose burdens upon or discriminate against Interstate Commerce was at stake and we think that case not at all controlling upon the present aspect of the case at bar. The District Court was right in not including among the conclusions of law requested by the appellee the ruling 'that Sections 40, 44 and 44(b) of Act No. 6 of June 30, 1936 as amended by Act No. 149 of May 15, 1937 are invalid as contrary to the Federal Alcoholic Administration Act'."
>
> *Sancho* v. *Bacardi Corp. of America*, 109 F. 2d 57, 63.

The Federal Act is a recognition that traffic in intoxicating liquors requires stringent control. State legislation which imposes additional or basic restrictions may properly be called supplemental legislation with which anyone who would abide by the provisions of the Federal Act must comply.

The ruling by this Court concerning the Federal Motor Carrier Act, 1935, 49 U. S. C. A. 301, *et seq.*, in *Ziffrin, Inc.*, v. *Reeves*, 308 U. S. 132, is precedent for the statement that Act 149 of the Puerto Rican Legislature does not conflict with the Federal Alcohol Administration Act. In the *Ziffrin* case, the petitioner held a permit under the Motor Carrier Act, but was denied a transporter's license by the State of Kentucky and without such license it could not carry intoxicants, even though the carriage was to be in

interstate commerce. In view of the asserted intention of Congress to regulate and coordinate transportation, it may be easier to visualize a conflict between the Kentucky statute and the Motor Carrier Act than it should be to find a conflict between the Puerto Rican statute and the Federal Alcohol Administration Act. Section 2 of the Motor Carrier Act of 1935 reads:

> "Sec. 2. *Declaration of policy and delegation of jurisdiction to Interstate Commerce Commission.*
>
> "(a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this chapter."

The decision of the Court in *Ziffrin, Inc.*, v. *Reeves*, *supra*, should be directly applicable to the case at bar. At pages 140-141, the Court said:

> "The Motor Carrier Act of 1935 is said to secure to appellant the right claimed [appellant claims the right to transport liquor out of the State of Ken-

tucky], but we can find nothing there which undertakes to destroy state power to protect her people against the evils of intoxicants or to sanction the receipt and conveyance of articles declared contraband. The Act has no such purpose or effect.

"The power of a state to regulate her internal affairs notwithstanding the consequent effect upon interstate commerce was much discussed in *South Carolina Hwy. Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 189. There it was again affirmed that although regulation by the State might impose some burden on interstate commerce this was permissible when 'an inseparable incident of the exercise of a legislative authority, which, under the Constitution, has been left to the states'. In the absence of controlling language to the contrary—and there is none—the Federal Motor Carrier Act should not be brought into conflict with this reiterated doctrine."

It is submitted that the Federal Alcohol Administration Act is not in conflict with the Puerto Rican Act which was passed to protect the renascent liquor industry of Puerto Rico and thus to promote the public welfare and general prosperity.

Respectfully submitted,

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Appendix A.

Puerto Rican Statutes.

ACT No. 115, "ALCOHOLIC BEVERAGE LAW OF PUERTO RICO," approved May 15, 1936; Laws of 1936, regular session, pages 610, *et seq.*

> Sec. 41. [Pertinent parts copied in Statement, *ante*, pp. 7-9; Laws of 1936, at pp. 640-646].
>
> Sec. 97. * * *—and it shall be in effect until September 30, 1936, as it contains provisions of an experimental nature.

ACT No. 6, "SPIRITS AND ALCOHOLIC BEVERAGES ACT," approved June 30, 1936; Law of 1936, special session, pages 44, *et seq.*

> To provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirts and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes.

Section 40. Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear on the label the following phrase in English: "Puerto Rican Rum," in letters the size of which the Treasurer shall by regulation prescribe, as well as the name of the person owning the distillery where said

rum was distilled. On the label of every alcoholic beverage shall also appear the word "Distilled," "Rectified," or "Blended," as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose [at p. 76].

Section 44. No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formerly known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *Provided,* That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico prior to the approval of this Act; and *Provided, further,* That distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and the regulations of the Treasurer [at p. 78].

Act No. 149, Approved May 15, 1937; Laws of 1937, regular session, pp. 392, 396.

To amend Section 1 by adding Section 1(*B*) which declares the Principles and policy of Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide

funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes"; to amend Section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 44 of said Act, by imposing conditions upon the holders of such permits; to add Section 44(*B*) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend Section 97 of said Act, by providing for remedies before the proper courts; to amend Section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval.

Be it enacted by the Legislature of Puerto Rico:

Section 1. Section 1 is hereby amended by adding Section 1(*b*) to Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes," which section shall be as follows:

"Section 1. The short title of this Act shall be "Spirits and Alcoholic Beverages Act.

"Section 1(*b*). *Declaration of Policy.* It has been and is the intention and the policy of this Legislature to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital

so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American market, and in any other possible purchasing market."

Section 2. Section 40 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 40. Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English *Puerto Rican Rum,* in letters not less than five-sixteenths (5/16) of an inch high and of lines of one-sixteenth (1/16) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths (4/5) of a pint and less the phrase *Puerto Rican Rum* must appear on the label in letters not less than one-eighth (⅛) of an inch high, said phrase to be not less than one and one-half (1½) inches long. On the label of every alcoholic beverage shall also appear the word *distilled, rectified,* or *blended,* as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; *Provided, further,* That the trade-mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturers, distiller, rectifier, bottler, or canner appears."

Section 3. Section 44 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 44. No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside of the Island of Puerto Rico; *Provided,* That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

Section 4. Section 44(*b*) is added to said Act No. 6, approved June 30, 1936, which section reads as follows:

"Section 44(*b*). Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer; *Provided,* That where any rectifier presents to the Treasurer a sworn application stating that he wishes to withdraw from business and to liquidate his stock of rum, provided said stock does not exceed 30,000 gallons at the equivalence of 100° proof, the Treasurer is empowered to authorize the sale of such stock in barrels of 40 gallons or more, either for sale in Puerto

Rico or for exportation to the United States or to any foreign country. The rectifier obtaining said authorization shall show that the liquidation will be carried out in good faith, for the purpose of discontinuing his business as such, by furnishing the Treasurer with such details and reports as he may request in order to be satisfied that the liquidation is made in good faith, and in such case, neither the natural nor the artificial person securing such authorization from the Treasurer, nor any officer thereof, may obtain a new permit to rectify before the expiration of five years counting from the date on which the permit requested was granted, and the present permit shall be cancelled."

Section 5. Section 97 of Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 97. (*a*) Whenever the Treasurer of Puerto Rico is empowered by this Act to sell articles or products confiscated by him or his agents, the aggrieved natural or artificial person may appeal to the corresponding district court, and said court shall have jurisdiction, after hearing the interested parties, to confirm, revoke, or modify the decision of the Treasurer. Said appeal shall be filed within ten days after the interested person is notified.

"(*b*) Any holder of a permit obtained under the provisions of this Act or of any other Act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceedings as may be necessary, to demand protection against violations of this Act on the part of other persons, upon the giving of a bond in an amount of not less than five thousand (5,000) dollars nor more than thirty thousand (30,000) dollars."

Section 6. Section 106 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 106. An emergency is hereby declared to exist which requires that this Act take effect immediately, and, therefore, Act No. 6 entitled 'An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes,' which bears also the short title Spirits and Alcoholic Beverages Act, approved June 30, 1936, as amended, shall be in full force and effect beginning with the approval of this Act, for an indefinite period of time, as a permanent law, it having evidenced its efficacy during the time it was in force as a law of experimental nature. Such experimental nature is hereby abolished and its indefinite and permanent nature is recognized; and all laws or parts of laws in conflict herewith are hereby repealed."

Section 7. In regard to trade-marks, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade-marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits, prior to February 1, 1936, provided such trade-marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date.

Section 8. This Act shall take effect ninety days after its approval.

Appendix B.

Constitutional Provisions.

Article I, Section 8, Clause 3:

> The Congress shall have Power. * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

Article IV, Section 3, Clause 2:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

Fifth Amendment.

> No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *.

Twenty-first Amendment, Sec. 3.

> The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Appendix C.

THE ORGANIC ACT FOR PUERTO RICO, ACT OF MARCH 2, 1917, c. 145, 39 STAT. 951:

Section 2. That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

Sec. 25. That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a Legislature * * * designated "the Legislature of Porto Rico".

Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, * * *.

Appendix D.

FEDERAL ALCOHOL ADMINISTRATION ACT, 49 STAT. 977, c. 814.

To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes.

Be it enacted * * *, That this Act may be cited as the "Federal Alcohol Administration Act."

Sec. 3. In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of purchasing for re-sale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

This subsection shall take effect March 1, 1936.

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this Act.

Sec. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the Administrator finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

Unfair Competition and Unlawful Practices.

Sec. 5. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate: * * *

(e) *Labeling.* To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless

such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liquers, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name

that is in simultation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided,* That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this Act; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products: *Provided further,* That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by

Federal law or except pursuant to regulations of the Administrator authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, no bottler, or importer of distilled spirits, wine, or malt beverages, shall, after such date as the Administrator fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than August 15, 1936, in the case of distilled spirits, and December 15, 1936, in the case of wine and malt beverages, and only after thirty days' public notice),[4] bottle or remove from customs custody for consumption distilled spirits, wine, or malt beverages, respectively, unless the bottler or importer, upon application to the Administrator, has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe: *Provided,* That any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the Administrator, shows to the satisfaction of the Administrator that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue and customs are authorized and directed to withhold the release of

[4] As amended by S. J. Res. 217, 74th Cong., 2d sess. Prior to the amendment and as originally enacted, the matter in parentheses read: "(but not later than March 1, 1936, and only after thirty days' public notice)."

such products from the bottling plant or customs custody unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Administrator. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Administrator upon any application under this subsection; or * * *

(f) *Advertising.* To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Administrator, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of dis-

tilled spirits (other than cordials, liquers, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertsing in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate. * * *

Appendix E.

TREATY SERIES, No. 833

TRADE MARK AND COMMERCIAL PROTECTION AND REGISTRATION OF TRADE MARKS

CONVENTION AND PROTOCOL

BETWEEN

THE UNITED STATES OF AMERICA AND OTHER AMERICAN REPUBLICS

Signed at Washington, February 20, 1929.
Ratification advised by the Senate of the United States, December 16, 1930 (legislative day of December 15, 1930).
Ratified by the President of the United States, February 11, 1931.
Ratification of the United States deposited with the Pan American Union, February 17, 1931.
Proclaimed by the President of the United States, February 27, 1931.

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1931

[illegible] by the Superintendent of Documents, Washington, D. C. - - - - - Price 15 cents

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS, a General Inter-American Convention for Trade Mark and Commercial Protection was signed by the respective Plenipotentiaries of the United States of America, Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua and Honduras, at Washington on the twentieth day of February, one thousand nine hundred and twenty-nine, and a Protocol on the Inter-American Registration of Trade Marks was signed on the same day by Plenipotentiaries of the said countries except Uruguay, Chile and Guatemala, which Convention and Protocol are word for word as follows:[1]

[1] Orthographic mistakes which are in the certified copies of the convention and protocol furnished to the Department of State pursuant to Article 37 of the convention and Article 19 of the protocol have not been corrected in the texts herein printed.—EDITOR.

CONVENCIÓN GENERAL INTERAMERICANA DE PROTECCIÓN MARCARIA Y COMERCIAL

Los Gobiernos de Perú, Bolivia, Paraguay, Ecuador, Uruguay, República Dominicana, Chile, Panamá, Venezuela, Costa Rica, Cuba, Guatemala, Haití, Colombia, Brasil, México, Nicaragua, Honduras y Estados Unidos de América, representados en la Conferencia Panamericana de Marcas de Fábrica reunida en Wáshington conforme a las Resoluciones aprobadas el 15 de febrero de 1928 por la Sexta Conferencia Internacional Americana celebrada en la ciudad de la Habana y el 2 de Mayo del mismo año, en Wáshington, por el Consejo Directivo de la Unión Panamericana,

Considerando indispensable revisar la "Convención para la Protección de las Marcas de Fábrica, Comercio y Agricultura y Nombres Comerciales" firmada en Santiago de Chile el 28 de abril de 1923 que sustituyó a la "Convención para la Protección de Marcas de Fábrica y de Comercio" celebrada en Buenos Aires el 20 de agosto de 1910, a fin de introducir en ella las reformas aconsejadas por la práctica y el progreso del derecho;

Animados por el propósito de hacer compatibles los distintos sistemas jurídicos que en esta materia rigen en las varias Repúblicas Americanas; y

Convencidos de la necesidad de realizar ese esfuerzo en la forma más amplia que sea posible en las circunstancias actuales con el debido respeto a las respectivas legislaciones nacionales,

Han resuelto negociar la presente Convención para la protección marcaria y comercial y la represión de la competencia desleal y de las falsas indicaciones

GENERAL INTER-AMERICAN CONVENTION FOR TRADE MARK AND COMMERCIAL PROTECTION.

The Governments of Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua, Honduras and the United States of America, represented at the Pan American Trade Mark Conference at Washington in accordance with the terms of the resolution adopted on February 15, 1928, at the Sixth International Conference of American States at Habana, and the resolution of May 2, 1928, adopted by the Governing Board of the Pan American Union at Washington,

Considering it necessary to revise the "Convention for the Protection of Commercial, Industrial, and Agricultural Trade Marks and Commercial Names," signed at Santiago, Chile, on April 28, 1923, which replaced the "Convention for the Protection of Trade Marks" signed at Buenos Aires on August 20, 1910, with a view of introducing therein the reforms which the development of law and practice have made advisable;

Animated by the desire to reconcile the different juridical systems which prevail in the several American Republics; and

Convinced of the necessity of undertaking this work in its broadest scope, with due regard for the respective national legislations,

Have resolved to negotiate the present Convention for the protection of trade marks, trade names and for the repression of unfair competition and false indi-

CONVENÇÃO GERAL INTER-AMERICANA DE PROTECÇÃO DE MARCAS DE FABRICA E PROTECÇÃO COMMERCIAL.

Os Governos do Perú, Bolivia, Paraguay, Equador, Uruguay, Republica Dominicana, Chile, Panamá, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brasil, Mexico, Nicaragua, Honduras e dos Estados Unidos da America, representados na Conferencia Pan-Americana de Marcas de Fabrica em Washington, de accordo comos termos da resolução adoptada a 15 de fevereiro de 1928, na Sexta Conferencia Internacional Americana em Havana e a resolução de 2 de maio de 1928, approvada pelo Conselho Director da União Pan-Americana em Washington.

Considerando que se torna necessaria a revisão da "Convenção para a Protecção das Marcas de Fabrica, Commercio e Agricultura e de Nomes Commerciaes" firmada em Santiago do Chile a 28 de abril de 1923, que substituiu a "Convenção para a Protecção de Marcas de Fabrica" assignada em Buenos Aires a 20 de agosto de 1910, com o fim de nella se introduzirem as reformas que o desenvolvimento da lei e da pratica tem tornado desejaveis;

Animados do desejo de reconciliar os differentes systemas juridicos que prevalecem nas diversas Republicas Americanas; e

Convencidos da necessidade de emprehender este trabalho no seu sentido mais amplo, devidamente respeitadas as respectivas legislações nacionaes;

Resolveram negociar a presente Convenção para a protecção das marcas de fabrica e nomes commerciaes e para a repressão da concurrencia desleal e falsas in-

CONVENTION GÉNÉRALE INTER-AMÉRICAINE POUR LA PROTECTION DES MARQUES DE FABRIQUE ET COMMERCIALE

Les Gouvernements du Pérou, de Bolivie, de Paraguay, de l'Équateur, de l'Uruguay, de la République Dominicaine, du Chili, de Panama, de Venezuela, de Costa Rica, de Cuba, de Guatemala, de Haïti, de Colombie, du Brésil, du Mexique, de Nicaragua, de Honduras et des États Unis représentés à la Conférence Panaméricaine de Marques de Fabrique tenue à Washington conformément aux termes de la résolution adoptée la 15 février 1928 à la Sixième Conférence des États Américains de La Havane, et de la résolution du 2 mai 1928 adoptée par le Conseil d'Administration de l'Union Panaméricaine à Washington;

Considérant qu'il est nécessaire de reviser la "Convention pour la Protection des Marques de Fabrique Commerciales, Industrielles et Agricoles et des Dénominations Commerciales" signée à Santiago, Chili, le 28 avril 1923, laquelle remplaça la "Convention pour la Protection des Marques de Fabrique" signée à Buenos Ayres le 20 août 1910, dans le but d'y introduire les réformes que le développement du droit et la coutume ont rendu nécessaires;

Animés du désir de réconcilier les différents systèmes juridiques qui existent dans les diverses Républiques américaines; et

Convaincus de qu'il importe de donner à cette oeuvre une portée aussi large que le permettent les conditions actuelles tout en respectant des législations nationales respectives,

Ont résolu de conclure la présente Convention pour la protection des marques de fabrique, du nom commercial et pour la répression de la concurrence déloyale et

de origen geográfico, nombrando para ese fin los siguientes delegados:

Perú:
Alfredo González-Prada.

Bolivia:
Emeterio Cano de la Vega.

Paraguay:
Juan V. Ramírez.

Ecuador:
Gonzalo Zaldumbide.

Uruguay:
J. Varela Acevedo.

República Dominicana:
Francisco de Moya.

Chile:
Oscar Blanco Viel.

Panamá:
Ricardo J. Alfaro.
Juan B. Chevalier.

Venezuela:
Pedro R. Rincones.

Costa Rica:
Manuel Castro Quesada.
Fernando E. Piza.

Cuba:
Gustavo Gutiérrez.
Alfredo Bufill.

Guatemala:
Adrián Recinos.
Ramiro Fernández.

Haití:
Raoul Lizaire.

Colombia:
Roberto Botero Escobar.
Pablo García de la Parra.

Brasil:
Carlos Delgado de Carvalho.

México:
Francisco Suástegui.

Nicaragua:
Vicente Vita.

Honduras:
Carlos Izaguirre V.

cations of geographical origin, and for this purpose have appointed as their respective delegates,

Peru:
Alfredo Gonzalez-Prada.

Bolivia:
Emeterio Cano de la Vega.

Paraguay:
Juan V. Ramirez.

Ecuador:
Gonzalo Zaldumbide.

Uruguay:
J. Varela Acevedo.

Dominican Republic:
Francisco de Moya.

Chile:
Oscar Blanco Viel.

Panama:
Ricardo J. Alfaro.
Juan B. Chevalier.

Venezuela:
Pedro R. Rincones.

Costa Rica:
Manuel Castro Quesada.
Fernando E. Piza.

Cuba:
Gustavo Gutierrez.
Alfredo Bufill.

Guatemala:
Adrian Recinos.
Ramiro Fernandez.

Haiti:
Raoul Lizaire.

Colombia:
Roberto Botero Escobar.
Pablo Garcia de la Parra.

Brazil:
Carlos Delgado de Carvalho.

Mexico:
Francisco Suastegui.

Nicaragua:
Vicente Vita.

Honduras:
Carlos Izaguirre V.

dicações de origem geographica, e nesse intuito nomearam os seus respectivos delegados, que são os seguintes:

Perú:
Alfredo González-Prada.

Bolivia:
Emeterio Cano de la Vega.

Paraguay:
Juan V. Ramírez.

Equador:
Gonzalo Zaldumbide.

Uruguay:
J. Varela Acevedo.

Republica Dominicana:
Francisco de Moya.

Chile:
Oscar Blanco Viel.

Panamá:
Ricardo J. Alfaro.
Juan B. Chevalier.

Venezuela:
Pedro R. Rincones.

Costa Rica:
Manual Castro Quesada.
Fernando E. Piza.

Cuba:
Gustavo Gutiérres.
Alfredo Bufill.

Guatemala:
Adrián Recinos.
Ramiro Fernández.

Haiti:
Raoul Lizaire.

Colombia:
Roberto Botero Escobar.
Pablo García de la Parra.

Brasil:
Carlos Delgado de Carvalho.

Mexico:
Francisco Suástegui.

Nicaragua:
Vicente Vita.

Honduras:
Carlos Izaguirre V.

des fausses indications géographiques d'origine et dans ce but ont nommé leurs délégués respectifs, à savoir:

Pérou:
Alfredo González-Prada.

Bolivie:
Emeterio Cano de la Vega.

Paraguay:
Juan V. Ramírez.

Équateur:
Gonzalo Zaldumbide.

Uruguay:
J. Varela Acevedo.

République Dominicaine:
Francisco de Moya.

Chili:
Oscar Blanco Viel.

Panama:
Ricardo J. Alfaro.
Juan B. Chevalier.

Venezuela:
Pedro R. Rincones.

Costa Rica:
Manuel Castro Quesada.
Fernando E. Piza.

Cuba:
Gustavo Gutiérrez.
Alfredo Bufill.

Guatemala:
Adrián Recinos.
Ramiro Fernández.

Haïti:
Raoul Lizaire.

Colombie:
Roberto Botero Escobar.
Pablo García de la Parra.

Brésil:
Carlos Delgado de Carvalho.

Mexique:
Francisco Suástegui.

Nicaragua:
Vicente Vita.

Honduras:
Carlos Izaguirre V.

Estados Unidos de América:
Francis White.
Thomas E. Robertson.
Edward S. Rogers.

Quienes, después de haber depositado sus credenciales, que fueron halladas en buena y debida forma por la Conferencia, han convenido lo siguiente:

Capítulo I.

DE LA IGUALDAD DE NACIONALES Y EXTRANJEROS ANTE LA PROTECCIÓN MARCARIA Y COMERCIAL

Artículo 1.

Los Estados Contratantes se obligan a otorgar a los nacionales de los otros Estados Contratantes y a los extranjeros domiciliados que posean un establecimiento fabril o comercial o una explotación agrícola en cualquiera de los Estados que hayan ratificado o se hayan adherido a la presente Convención, los mismos derechos y acciones que las leyes respectivas concedan a sus nacionales o domiciliados con relación a marcas de fábrica, comercio o agricultura, a la protección del nombre comercial, a la represión de la competencia desleal y de las falsas indicaciones de origen o procedencia geográficos.

Capítulo II.

DE LA PROTECCIÓN MARCARIA

Artículo 2.

El que desee obtener protección para sus marcas en un país distinto al suyo en que esta Convención rija, podrá obtener dicha protección bien solicitándola directamente de la oficina correspondiente del Estado en que

United States of America:
Francis White.
Thomas E. Robertson.
Edward S. Rogers.

Who, after having deposited their credentials, which were found to be in good and due form by the Conference, have agreed as follows:

Chapter I.

EQUALITY OF CITIZENS AND ALIENS AS TO TRADE MARK AND COMMERCIAL PROTECTION.

Article 1.

The Contracting States bind themselves to grant to the nationals of the other Contracting States and to domiciled foreigners who own a manufacturing or commercial establishment or an agricultural development in any of the States which have ratified or adhered to the present Convention the same rights and remedies which their laws extend to their own nationals or domiciled persons with respect to trade marks, trade names, and the repression of unfair competition and false indications of geographical origin or source.

Chapter II.

TRADE MARK PROTECTION.

Article 2.

The person who desires to obtain protection for his marks in a country other than his own, in which this Convention is in force, can obtain protection either by applying directly to the proper office of the State in which he

Estados Unidos da America:
Francis White.
Thomas E. Robertson.
Edward S. Rogers.

Os quaes, depois de terem depositado as suas credenciaes, que foram achadas em boa e devida forma pela Conferencia, concordaram no seguinte:

Capitulo I.

IGUALDADE DE NACIONAES E EXTRANGEIROS NO QUE DIZ RESPEITO Á PROTECÇÃO DE MARCAS DE FABRICA E Á PROTECÇÃO COMMERCIAL.

Artigo 1.

Os Estados Contractantes se obrigam a outorgar aos nacionaes dos outros Estados Contractantes e a extrangeiros domiciliados que possuam um estabelecimento fabril ou desenvolvimento agricola em qualquer dos Estados que tenham ratificado ou adherido á presente Convenção, os mesmos direitos e os mesmos recursos que as suas leis concedem aos seus proprios nacionaes ou pessoas domiciliadas no respeito a marcas de fabrica, nomes commerciaes, e a repressão de concurrencia desleal e falsas indicações de origem ou procedencia geographica.

Capitulo II

PROTECÇÃO DAS MARCAS DE FABRICA.

Artigo 2.

A pessoa que desejar obter protecção para as suas marcas em um paiz que não seja o seu proprio paiz, no qual estiver em vigor esta Convenção, poderá obter tal protecção ou mediante pedido feito directamente á correspon-

États Unis d'Amérique:
Francis White.
Thomas E. Robertson.
Edward S. Rogers.

Lesquels, après avoir déposé leurs lettres de créances qui ont été reconnues en bonne et due forme par la Conférence, ont convenu de ce qui suit:

Chapitre I.

ÉGALITÉ DES NATIONAUX ET DES ÉTRANGERS DANS LA PROTECTION DES MARQUES DE FABRIQUE ET COMMERCIALE.

Article 1er.

Les États contractants s'engagent à accorder aux nationaux des autres États contractants, ainsi qu'aux étrangers domiciliés qui possèdent un établissement industriel ou commercial, ou une enterprise agricole dans l'un quelconque des États qui ont ratifié la présente Convention ou qui y ont adhéré, les mêmes droits et recours que leurs propres lois octroient à leurs propres nationaux ou résidents en ce qui concerne marques de fabrique commerciales ou agricoles, la protection du nom commercial, la répression de toute concurrence déloyale et les fausses indications géographiques d'origine ou de provenance.

Chapitre II.

PROTECTION DES MARQUES DE FABRIQUE.

Article 2.

Toute personne qui désire obtenir la protection de ses marques dans un pays autre que le sien, dans lequel la Convention est en vigueur, peut l'obtenir en s'adressant soit directement au service correspondant de l'État dans le-

desee obtener la referida protección, o por medio de la Oficina Interamericana de Marcas a que se refiere el Protocolo sobre Registro Interamericano, siempre que dicho Protocolo haya sido aceptado por su país y por la nación donde se solicite la protección.

desires to obtain protection, or through the Inter-American Trade Mark Bureau referred to in the Protocol on the Inter-American Registration of Trade Marks, if this Protocol has been accepted by his country and the country in which he seeks protection.

Artículo 3.

Toda marca debidamente registrada o legalmente protegida en uno de los Estados Contratantes será admitida a registro o depósito y protegida legalmente en los demás Estados Contratantes, previo el cumplimiento de los requisitos formales establecidos por la ley nacional de dichos Estados.

Podrá denegarse o cancelarse el registro o depósito de marcas:

1. Cuyos elementos distintivos violen los derechos previamente adquiridos por otra persona en el país donde se solicita el registro o depósito.

2. Que estén desprovistas de todo carácter distintivo o consistan exclusivamente en palabras, signos o indicaciones que sirven en el comercio para designar la clase, especie, calidad, cantidad, destino, valor, lugar de origen de los productos, época de producción, o que son o hayan pasado a ser genéricas o usuales en el lenguaje corriente o en la costumbre comercial del país al tiempo en que se solicite el registro o depósito, cuando el propietario de la marca las reivindique o pretenda reivindicarlas como elementos distintivos de la misma.

Para determinar el carácter distintivo de una marca, deberán tomarse en consideración todas las circunstancias existentes, en especial la duración del uso de la

Article 3.

Every mark duly registered or legally protected in one of the Contracting States shall be admitted to registration or deposit and legally protected in the other Contracting States, upon compliance with the formal provisions of the domestic law of such States.

Registration or deposit may be refused or cancelled of marks:

1. The distinguishing elements of which infringe rights already acquired by another person in the country where registration or deposit is claimed.

2. Which lack any distinctive character or consist exclusively of words, symbols, or signs which serve in trade to designate the class, kind, quality, quantity, use, value, place of origin of the products, time of production, or which are or have become at the time registration or deposit is sought, generic or usual terms in current language or in the commercial usage of the country where registration or deposit is sought, when the owner of the marks seeks to appropriate them as a distinguishing element of his mark.

In determining the distinctive character of a mark, all the circumstances existing should be taken into account, particularly the duration of the use of the

dente repartição do Estado em que pretenda obter a referida protecção ou por intermedio da Secretaria Inter-Americana de Marcas de Fabrica referida no Protocollo sobre o Registro Inter-Americano de Marcas de Fabrica, com tanto que esse Protocollo tenha sido aceito pelo seu paiz e pelo paiz no qual deseje protecção.

Artigo 3.

Toda a marca devidamente registrada ou legalmente protegida em um dos Estados Contractantes será admittida a registro ou deposito e legalmente protegida nos outros Estados Contractantes, mediante cumprimento das disposições formaes da lei nacional dos mesmos Estados.

O registro ou o deposito poderá ser recusado ou cancellado no caso das marcas:

1. Cujos elementos distinctivos infrinjam direitos previamente adquiridos por outrem no paiz em que se requer registro ou deposito.

2. Nas quaes faltar qualquer caracter distinctivo ou que consistirem exclusivamente em palavras, symbolos, ou signaes destinados no commercio a designar a classe, natureza, qualidade, quantidade, uso, valor, logar de origem dos productos, epoca de producção ou que sejam ou tenham chegado a ser na occasião do pedido de registro ou deposito, termos genericos ou communs da linguagem corrente ou do uso commercial do paiz em que se requer registro ou deposito, ou quando o proprietario da marca pretender apropriar-as como elemento distinctivo de sua marca.

No determinar o caracter distinctivo de uma marca, devem-se tomar em conta todas as circumstancias existentes, principalmente o prazo de duração do uso

quel il désire obtenir cette protection, soit par l'intermédiaire du Bureau Interaméricain des Marques de Fabrique auquel se réfère le protocole annexe, si ce protocole a été accepté par son pays aussi bien que par le pays dans lequel il demande protection.

Article 3.

Toute marque dûment enregistrée et légalement protégée dans un des États contractants sera admise à l'enregistrement ou au dépôt et légalement protégée dans les autres États contractants en se conformant aux prescriptions y relatives de la législation de ces États.

L'enregistrement ou le dépôt peut être refusé ou annulé pour les marques:

1. Dont les éléments distinctifs enfreignent les droits déjà acquis par une autre personne dans le pays où la protection est demandée.

2. Qui sont dépourvus de tout caractère distinctif ou qui consistent exclusivement en termes, symboles ou signes qui servent dans le commerce à désigner l'espèce, le genre, la qualité, la quantité, l'usage, le lieu d'origine des produits, l'époque de production, ou qui sont ou sont devenus au moment de la demande d'enregistrement ou de dépôt des termes génériques ou usuels soit dans le langage courant, soit dans la pratique commerciale du pays où l'on demande la protection ou le dépôt lorsque le propriétaire des marques cherche à se les approprier comme éléments distinctifs de ses marques.

Pour déterminer le caractère distinctif d'une marque, il y a lieu de tenir compte de toutes les circonstances existantes, particulièrement de la durée de l'usage

marca y si dicha marca ha adquirido de hecho en el país en que se solicite el depósito, registro o protección, una significación distintiva de la mercancía del solicitante.

3. Que ofendan a la moral pública o sean contrarias al orden público.

4. Que ridiculicen o tiendan a ridiculizar personas, instituciones, creencias o símbolos nacionales o de asociaciones de interés público,

5. Que contengan representaciones de tipos raciales o paisajes típicos o característicos de cualquiera de los Estados Contratantes distinto al de origen de la marca.

6. Que tengan entre sus elementos distintivos principales, frases, nombres o lemas que constituyan el nombre comercial o la parte esencial o característica del mismo, perteneciente a alguna persona dedicada a la fabricación, comercio o producción de artículos o mercancías de la misma clase a que se destine la marca, en cualquiera de los demás países contratantes.

Artículo 4.

Los Estados Contratantes acuerdan rehusar o cancelar el registro o depósito y prohibir el uso sin autorización de la autoridad competente, de las marcas que incluyan banderas nacionales o de los estados, escudos de armas, sellos nacionales o de los estados, dibujos de las monedas públicas o de los sellos de correo, certificados o sellos oficiales de garantía, o cualesquiera insignias oficiales, nacionales o de los estados, o imitaciones de las mismas.

mark and if in fact it has acquired in the country where deposit, registration or protection is sought, a significance distinctive of the applicant's goods.

3. Which offend public morals or which may be contrary to public order.

4. Which tend to expose persons, institutions, beliefs, national symbols or those of associations of public interest, to ridicule or contempt.

5. Which contain representations of racial types or scenes typical or characteristic of any of the Contracting States, other than that of the origin of the mark.

6. Which have as a principal distinguishing element, phrases, names or slogans which constitute the trade name or an essential or characteristic part thereof, belonging to some person engaged in any of the other Contracting States in the manufacture, trade or production of articles or merchandise of the same class as that to which the mark is applied.

Article 4.

The Contracting States agree to refuse to register or to cancel the registration and to prohibit the use, without authorization by competent authority, of marks which include national and state flags and coats-of-arms, national or state seals, designs on public coins and postage stamps, official labels, certificates or guarantees, or any national or state official insignia or simulations of any of the foregoing.

da marca e se de facto tenha adquirido no paiz em que se solicite deposito, registro ou protecção, a significação distinctiva das mercadorias do registrante.

3. Que offenderem a moral publica ou que forem contrarias á ordem publica.

4. Que tenderem a expor ao ridiculo ou ao despreso pessoas, instituições, crenças, symbolos nacionaes ou de associações de interesse publico.

5. Que contiverem representações de typos raciaes ou vistas typicas ou caracteristicas de qualquer dos Estados Contractantes além do de origem da marca.

6. Que tiverem como elemento distinctivo principal, phrases, nomes, ou lemas que constituam, ou, na sua totalidade ou em uma parte essencial e caracteristica, o nome pertencente a outra pessoa occupada em qualquer dos outros Estados Contractantes no fabrico, negocio ou producção de artigos ou mercadorias da mesma especie que aquellas ás quaes se applica a marca.

Artigo 4.

Os Estados Contractantes concordam em recusar o registro ou cancellar o registro e prohibir o uso sem autorização da competente autoridade, de marcas que tragam bandeiras nacionaes ou estadoaes e escudos de armas, sellos nacionaes ou estadoaes, lemmas tirados de moedas publicas e sellos do correio, rotulos officiaes, certificados ou sellos de garantia, ou qualquer insignia official ou simulação de qualquer dos supramencionados objectos.

de la marque et de la question de savoir si en fait elle a acquis dans le pays où il en est demandé dépôt, l'enregistrement ou protection une signification distinctive des marchandises du requérant.

3. Qui offensent la morale publique ou qui peuvent être contraires à l'ordre public.

4. Qui ridiculisent ou tendent à ridiculiser les personnes, les institutions, les croyances ou les emblèmes religieux ou nationaux ou les associations d'intérêt public.

5. Qui comportent des gravures représentant des types de races ou de scènes typiques ou caractéristiques de l'un des états contractants autres que de celui dont la marque est originaire.

6. Qui ont comme élément distinctif principal des phrases, noms ou devises qui constituent le nom commercial ou une de ses parties essentielles ou caractéristiques appartenant à une personne qui se livre, dans un des autres états contractants à la fabrication, au commerce ou à la production des articles ou marchandises de la même catégorie que ceux auxquels s'applique la marque.

Article 4.

Les États contractants conviennent de refuser ou de cancelier l'enregistrement et d'interdire l'usage, sans l'autorisation des autorités compétentes, de marques qui comportent des drapeaux et armoiries nationaux ou d'états, les sceaux nationaux ou d'états, les motifs des pièces de monnaie ou des timbres poste, les sceaux officiels, certificats ou sceaux officiels de légalisation, ou tout autre insigne officiel national ou d'état ainsi que leurs imitations.

Artículo 5.

Las etiquetas, dibujos industriales, lemas, catálogos, anuncios o avisos que se usen para identificar o anunciar mercancías, gozarán de la misma protección que las marcas en los Estados Contratantes cuyas leyes así lo dispongan, de acuerdo con las prescripciones de la legislación local.

Article 5.

Labels, industrial designs, slogans, prints, catalogues or advertisements used to identify or to advertise goods, shall receive the same protection accorded to trade marks in countries where they are considered as such, upon complying with the requirements of the domestic trade mark law.

Artículo 6.

Los Estados Contratantes se comprometen a admitir a registro o depósito y a proteger las marcas de propiedad colectiva o que pertenezcan a asociaciones cuya existencia no sea contraria a las leyes del país de origen, aun cuando dichas colectividades no posean un establecimiento fabril, industrial, comercial o agrícola.

Cada país determinará las condiciones particulares bajo las cuales se podrán proteger las marcas de dichas colectividades.

Los Estados, Provincias o Municipios en su carácter de personas jurídicas, podrán poseer, usar, registrar o depositar marcas y gozarán en tal sentido de los beneficios de esta Convención.

Article 6.

The Contracting States agree to admit to registration or deposit and to protect collective marks and marks of associations, the existence of which is not contrary to the laws of the country of origin, even when such associations do not own a manufacturing, industrial, commercial or agricultural establishment.

Each country shall determine the particular conditions under which such marks may be protected.

States, Provinces or Municipalities, in their character of corporations, may own, use, register or deposit marks and shall in that sense enjoy the benefits of this Convention.

Artículo 7.

Todo proprietario de una marca legalmente protegida en uno de los Estados Contratantes conforme a su legislación interna, que tenga conocimiento de que alguna persona o entidad usa o pretende registrar o depositar una marca sustancialmente igual a la suya o susceptible de producir confusión o error en el adquirente o consumidor de los productos o mercancías a que se apliquen, tendrá el derecho de oponerse al uso, registro o depósito de la misma, empleando los medios,

Article 7.

Any owner of a mark protected in one of the Contracting States in accordance with its domestic law, who may know that some other person is using or applying to register or deposit an interfering mark in any other of the Contracting States, shall have the right to oppose such use, registration or deposit and shall have the right to employ all legal means, procedure or recourse provided in the country in which such interfering mark is being used or where its regis-

Artigo 5.

Os Rotulos, desenhos industriaes, divisas, letreiros, catalagos, ou annuncios usados para identificar ou annunciar mercadorias, receberão a mesma protecção que a outorgada a marcas de fabrica em paizes onde são consideradas como taes, mediante cumprimento das exigencias da lei nacional de marcas de fabrica.

Article 5.

Les étiquettes, devises, dessins industriels, imprimés, catalogues ou réclames employés pour identifier ou pour faire connaître les marchandises recevront la même protection que celle accordée aux marques de fabrique dans les pays où ils sont considérés comme tels en se conformant aux prescriptions de la loi nationale sur les marques de fabrique.

Artigo 6.

Os Estados Contractantes concordam em admittir a registro ou deposito e a proteger as marcas collectivas e marcas de associações cuja existencia não fôr contraria ás leis do paiz de origem, mesmo quando taes collectividades não possuam um estabelecimento fabril, industrial, commercial ou agricola.

Cada paiz determinará as condições particulares debaixo das quaes as marcas das referidas collectividades possam ser protegidas.

Os Estados, as Provincias ou as Municipalidades, no seu caracter de corporações, podem possuir, usar, registrar ou depositar marcas e nessa capacidade gozarão dos beneficios desta Convenção.

Article 6.

Les États contractants s'engagent à accepter à l'enregistrement ou au dépôt et à protéger les marques collectives ou d'associations dont l'existence n'est pas contraire aux lois du pays d'origine, même lorsque les dites associations ne possèdent aucune manufacture ou établissement industriel, commercial ou agricole.

Chaque pays déterminera les conditions particulières suivant lesquelles ces marques pourront être protégées.

Les États, provinces ou municipalités, en tant que personnes juridiques, peuvent posséder, employer, enregistrer ou déposer des marques et jouir ainsi des benefices de la présente Convention.

Artigo 7.

Qualquer dono de uma marca protegida em um dos Estados Contractantes na conformidade de sua legislação interior, que souber que outra pessoa esteja usando ou procurando registrar ou depositar uma marca interferente em qualquer outro Estado Contractante, terá o direito de se oppor ao uso, registro ou deposito da mesma e terá o direito de empregar todos os meios legaes, processos, ou recursos de que dispõe o paiz no qual a dita marca esteja sendo usada ou em

Article 7.

Tout propriétaire d'une marque légalement protégée dans l'un des États contractants conformément à la législation nationale, qui a connaissance qu'une autre personne fait usage ou cherche à enregistrer ou à déposer une marque faisant double emploi avec la sienne dans tout autre État contractant, aura le droit de s'opposer à un tel usage, enregistrement, ou dépôt et celui d'employer tous les moyens légaux de procédure ou de recours prévus dans le pays où la marque delic-

procedimientos y recursos legales establecidos en el país en que se use o pretenda registrar o depositar dicha marca, probando que la persona que la usa o intenta registrar o depositar, tenía conocimiento de la existencia y uso en cualquiera de los Estados Contratantes, de la marca en que se funde la oposición y que ésta se usaba y aplicaba y continúa usándose y aplicándose a productos o mercancías de la misma clase; y, en consecuencia, podrá reclamar para sí el derecho a usar preferente y exclusivamente, o la prioridad para registrar o depositar su marca en el país de que se trate siempre que llene las formalidades establecidas en la legislación interna y en esta Convención.

Artículo 8.

Cuando el propietario de una marca solicite su registro o depósito en otro de los Estados Contratantes distinto al del de origen de la marca, y se le niegue por existir un registro o depósito previo de otra marca que lo impida por su identidad o manifiesta semejanza capaz de crear confusion, tendrá derecho a solicitar y obtener la cancelación o anulación del registro o depósito anteriormente efectuado, probando, conforme a los procedimientos legales del Estado en que se solicite la cancelación:

(*a*) que gozaba de protección legal para su marca en uno de los Estados Contratantes con anterioridad a la fecha de la solicitud del registro o depósito que trata de anular; y

(*b*) que el propietario de la marca cuya cancelación se pretende tenía conocimiento del uso, empleo, registro o depósito en cualquiera de los Estados Contratantes, de la marca en que se funda la acción de nulidad, para

tration or deposit is being sought, and upon proof that the person who is using such mark or applying to register or deposit it had knowledge of the existence and continuous use in any of the Contracting States of the mark on which opposition is based upon goods of the same class, the opposer may claim for himself the preferential right to use such mark in the country where the opposition is made or priority to register or deposit it in such country, upon compliance with the requirements established by the domestic legislation in such country and by this Convention.

Article 8.

When the owner of a mark seeks the registration or deposit of the mark in a Contracting State other than that of origin of the mark and such registration or deposit is refused because of the previous registration or deposit of an interfering mark, he shall have the right to apply for and obtain the cancellation or annulment of the interfering mark upon proving, in accordance with the legal procedure of the country in which cancellation is sought, the stipulations in Paragraph (*c*) and those of either Paragraph (*a*) or (*c*) below:

(*a*) That he enjoyed legal protection for his mark in another of the Contracting States prior to the date of the application for the registration or deposit which he seeks to cancel; and

(*b*) that the claimant of the interfering mark, the cancellation of which is sought, had knowledge of the use, employment, registration or deposit in any of the Contracting States of the mark for the specific goods to which said inter-

que esteja sendo requerido o seu registro ou deposito, e, mediante prova que a referida pessoa que estiver usando ou procurando registrar ou depositar a marca, sabia da existencia e uso continuo em qualquer dos Estados Contractantes da marca sobre a qual se baseia a opposição, e sabia que se achava applicada a productos e mercadorias da mesma classe, o reclamante poderá requerer para si o direito preferencial de usar tal marca no paiz em que se levanta a opposição, ou prioridade para registrar ou depositar-a no referido paiz, com tanto que elle preencha as formalidades exigidas pela legislação interior de tal paiz e desta Convenção.

Artigo 8.

Quando o proprietario de uma marca requerer o registro ou o deposito da marca em um Estado Contractante diverso do de origem da marca, e tal registro ou deposito lhe fôr negado por causa da existencia de um registro ou deposito previo de uma marca interferente, elle terá o direito de solicitar e obter o cancellamento ou revogação do registro ou deposito, caso provar de accordo com os processos legaes do paiz em que procura o cancellamento, as estipulações do Paragrapho (*a*) e as do Paragraphos (*b*) ou (*c*) abaixo referidos:

(*a*) Que elle se achava no goso da protecção legal de sua marca em um dos Estados Contractantes anteriormente á data em que foi pedido o registro ou deposito que elle procura annular; e

(*b*) que o proprietario da marca interferente cuja cancellamento se procura, tinha conhecimento do uso, emprego, registro, ou deposito em qualquer dos Estados Contractantes da marca para os mesmos productos ou mercado-

tueuse est en usage, ou dans le pays où l'enregistrement ou le dépôt en est recherché. Sur la preuve que la personne qui en a fait usage ou qui en recherche l'enregistrement ou le dépôt avait connaissance de l'existence et de l'usage constant dans un des États contractants de la marque qui sert de base à l'opposition et pour des marchandises de même espèce, l'opposant pourra réclamer pour lui-même le droit d'user exclusivement et par préférence d'une pareille marque dans le pays où l'opposition est produite ou encore la priorité d'enregistrement ou de dépôt dans le dit pays en se conformant aux prescriptions de la législation nationale de ce pays et à celles de la présente Convention.

Article 8.

Lorsque le propriétaire d'une marque recherche l'enregistrement ou le dépôt de sa marque dans un État contractant autre que l'État d'origine de la dite marque, et que cet enregistrement ou dépôt lui est refusée parcequ'il y a eu déjà enregistrement ou dépôt d'une marque avec laquelle sa marque fait double emploi, il aura le droit de demander et d'obtenir cancellation ou annullation de la dite marque en faisant la preuve dans les formes de la procédure légale du pays dans lequel la cancellation est poursuivie:

(*a*) Qu'il jouissait de la protection légale pour sa marque antérieurement à la date de l'enregistrement ou du dépôt de celle dont il poursuit la cancellation; et

(*b*) Que le propriétaire de la marque dont la cancellation est poursuivie avait connaissance de l'usage, emploi, enregistrement ou dépôt dans l'un quelconque des États contractants de la marque sur laquelle se fonde l'action en

los mismos productos o mercancías a que específicamente se aplique, con anterioridad a la adopción y uso o a la presentación de la solicitud de registro o depósito de la marca que se trata de cancelar; o

(c) que el propietario de la marca, que solicite la cancelación basado en un derecho preferente a la propiedad y uso de la misma, haya comerciado y comercie con o en el país en que se solicite la cancelación y que en éste hayan circulado y circulen los productos o mercancías señalados con su marca desde fecha anterior a la presentación de la solicitud de registro o depósito de la marca cuya cancelación se pretende, o de la adopción y uso de la misma.

Artículo 9.

Cuando la denegación del registro o depósito de una marca se base en un registro previo hecho de acuerdo con esta Convención, el propietario de la marca de que se trate tendrá el derecho de pedir y de obtener la cancelación de la marca previamente registrada o depositada, probando, de acuerdo con los procedimientos legales del país en que trata de obtener el registro o depósito de su marca, que el registrante de la marca que desea cancelar la ha abandonado. El término para declarar abandonada una marca por falta de uso será el que determine la ley nacional, y en su defecto, será de dos años y un día a contar desde la fecha del registro o depósito si la marca no ha sido nunca empleada, o de un año y un día si el abandono o falta de empleo tuvo lugar después de haber sido usada.

fering mark is applied, prior t adoption and use thereof or pri to the filing of the application deposit of the mark which sought to be cancelled; or

(c) that the owner of the mar who seeks cancellation based on prior right to the ownership a use of such mark, has traded trades with or in the country which cancellation is sought, a that goods designated by mark have circulated and circu late in said country from a da prior to the filing of the applica tion for registration or depos for the mark, the cancellati which is claimed, or prior to th adoption and use of the same.

Article 9.

When the refusal of registrati or deposit of a mark is based on registration previously effected accordance with this Conventio the owner of the refused ma shall have the right to request a obtain the cancellation of th mark previously registered or d posited, by proving, in accordan with the legal procedure of th country in which he is endeavo ing to obtain registration or d posit of his mark, that the reg trant of the mark which desires to cancel, has abandone it. The period within which mark may be declared abandone for lack of use shall be determin by the internal law of each cou try, and if there is no provision the internal law, the period sha be two years and one day begi ning from the date of registrati or deposit if the mark has nev been used, or one year and a day if the abandonment or la of use took place after the mar has been used.

rias aos quaes se acha especificamente applicada a referida marca interferente, anteriormente á adopção e uso da mesma ou anteriormente ao pedido de registro ou deposito da marca que se trata de cancellar; ou

(c) que o proprietario da marca, o qual procura revogação baseada em um direito previo de propriedade e uso da mesma, tenha negociado ou negocie com ella dentro do paiz em que se procura revogação e que productos ou mercadorias designados com sua marca tenham circulado e circulem no referido paiz a partir de uma data previa á do pedido de registro ou deposito da marca que se trata de revogar, ou previamente á adopção e uso da mesma.

Artigo 9.

Quando a recusa de registro ou deposito de uma marca se basear sobre registro previamente effectuado de accordo com esta Convenção, o dono da marca recusada terá o direito de requerer e obter o cancellamento da marca previamente registrada ou depositada, caso provar, de accordo com o procedimento legal do paiz em que procurar obter registro ou deposito da sua marca, que o registrante da marca que elle procura cancellar abandanou-a. O prazo dentro do qual uma marca poderá ser declarada abandonada por falta de uso será determinado pela lei interna de cada paiz, e se não houver disposição na lei interna, o periodo será de dois annos e um dia a partir da data do registro ou deposito se a marca não tiver nunca sido usada, ou um anno e um dia se o abandono ou a falta de uso teve logar depois de ter sido usada a marca.

nullité pour des articles ou produits de la même espèce que ceux auxquels la marque incriminée s'applique antérieurement à l'adoption ou l'usage de celle-ci ou antérieurement à la présentation de sa demande pour l'enregistrement ou le dépôt de cette marque incriminée; ou

(c) Que le propriétaire de la marque qui poursuit la cancellation sur la base d'un droit antérieur à l'appropriation et usage de cette marque a commercé ou commerce avec ou dans le pays dans lequel la cancellation est poursuivie; et que les marchandises désignées par sa marque ont circulé ou circulent dans le dit pays depuis une date antérieure à la présentation de la demande d'application de la marque incriminée et antérieurement à l'adoption et l'usage de celle-ci.

Article 9.

Lorsque le refus d'enregistrement ou de dépôt d'une marque est basé sur un enregistrement déjà effectué conformément à cette Convention, le propriétaire de la marque refusée aura le droit de requérir et d'obtenir la cancellation de la marque déjà enregistrée ou déposée, en prouvant, conformément à la procédure légale du pays dans lequel il s'efforce d'obtenir l'enregistrement ou le dépôt de sa marque, que le titulaire de la marque enregistrée qu'il désire faire canceller l'a abandonnée. Le délai après lequel une marque peut être déclarée abandonnée faute d'usage sera déterminée par la loi nationale de chaque pays, et s'il n'existe aucune disposition dans la loi nationale, cette période sera de deux ans et un jour à partir de la date d'enregistrement ou de dépôt si la marque n'a jamais été utilisée, ou un an et un jour si l'abandon ou le manque d'usage a eu lieu après que la marque a été utilisée.

Artículo 10.

El período de protección otorgado a las marcas registradas o depositadas de acuerdo con los términos de esta Convención, así como sus renovaciones, será el que fijen las leyes del Estado en que se solicite el registro o depósito al tiempo de solicitarse la protección de acuerdo con esta Convención.

Una vez efectuado el registro o depósito de una marca en cada Estado Contratante, existirá independientemente y no será afectado por los cambios que ocurran en el registro o depósito de dicha marca en otros Estados Contratantes, salvo que otra cosa disponga la legislación interna de cada Estado Contratante.

Artículo 11.

La trasmisión en el país de origen de la propiedad de una marca registrada o depositada, tendrá el mismo valor y será reconocida en los demás Estados Contratantes, siempre que se acompañen pruebas fehacientes de que dicha trasmisión se ha efectuado y registrado de acuerdo con la legislación interna del Estado en que se realizó, y se cumpla además con los requisitos legales del país en que debe tener efecto la trasmisión.

El uso y explotación de las marcas puede cederse o traspasarse separadamente para cada país, y se registrará siempre que se acompañen pruebas fehacientes de que dicha trasmisión se ha efectuado de acuerdo con la legislación interna del Estado en que se realizó, y se cumpla además con los requisitos legales del país en que debe tener efecto la trasmisión.

Article 10.

The period of protection granted to marks registered, deposited or renewed under this Convention, shall be the period fixed by the laws of the State in which registration, deposit or renewal is made at the time when made.

Once the registration or deposit of a mark in any Contracting State has been effected, each such registration or deposit shall exist independently of every other and shall not be affected by changes that may occur in the registration or deposit of such mark in the other Contracting States, unless otherwise provided by domestic law.

Article 11.

The transfer of the ownership of a registered or deposited mark in the country of its original registration shall be effective and shall be recognized in the other Contracting States, provided that reliable proof be furnished that such transfer has been executed and registered in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

The use and exploitation of trade marks may be transferred separately for each country, and such transfer shall be recorded upon the production of reliable proof that such transfer has been executed in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

Artigo 10.

O periodo de protecção outorgado a marcas registradas, depositadas ou renovadas de accordo com esta Convenção será o periodo estabelecido pelas leis do Estado de registro, deposito ou renovação, na epoca em que se effectuar.

Uma vez effectuado o registro ou deposito de uma marca em um Estado Contractante, cada um destes registros ou depositos existirá independemente de qualquer outro e não será affectado pelas mudanças que occorrerem no registro ou deposito de taes marcas em outros Estados Contractantes, salvo outras disposições da legislação interna.

Artigo 11.

A transferencia da posse de uma marca registrada ou depositada no paiz do seu registro original vigorará e será reconhecida nos outros Estados Contractantes, comtanto que sejam fornecidas provas sufficientes de que tal transferencia foi executada e registrada de accordo com a lei interna do Estado em que se tenha effectuado a transferencia. Tal transferencia será annotada de accordo com a legislação do paiz em que deverá vigorar.

O uso e a exploração das marcas de fabrica poderão ser transferidos separadamente em cada paiz, e tal transferencia será registrada mediante provas cabaes de ter sido tal transferencia executada de accordo com a lei interna do Estado em que se tiver effectuado a transferencia. A referida transferencia será annotada de accordo com a legislação do paiz em que tiver de vigorar.

Article 10.

La durée de protection accordée aux marques enregistrées, déposées ou renouvelées conformément aux termes de cette Convention sera celle fixée par les lois de l'État dans lequel l'enregistrement, le dépôt ou le renouvellement est effectué au moment où il est effectué.

Une fois que l'enregistrement ou le dépôt d'une marque dans un État contractant a été effectué, chacun de ces enregistrements ou dépôts existera indépendamment de tout autre et ne sera aucunement affecté par les changements qui peuvent se produire dans l'enregistrement ou le dépôt de telles marques dans d'autres États contractants, à moins que la loi nationale en dispose autrement.

Article 11.

Le transfert de la propriété d'une marque enregistrée ou déposée dans le pays de son enregistrement original sera effectif et sera reconnu dans les autres États contractants pourvu qu'une preuve digne de foi soit produite que le dit transfert a été effectué et enregistré conformément à la loi nationale de l'État dans lequel le transfert a eu lieu. Ce transfert sera constaté conformément à la législation du pays dans lequel il doit être effectif.

L'usage et l'exploitation des marques de fabrique peut être transféré séparément pour chaque pays, et le transfert sera enregistré sur la production de la preuve digne de foi que cet enregistrement a bien été effectué conformément à la loi nationale de l'État dans lequel il a eu lieu. Ce transfert sera constaté conformément à la législation du pays dans lequel il doit être effectif.

Artículo 12.

Cualquier registro o depósito efectuado en uno de los Estados Contratantes, o cualquiera solicitud de registro o depósito pendiente de resolver, hecha por un agente, representante o cliente del propietario de una marca sobre la que se haya adquirido derecho en otro Estado Contratante por su registro, solicitud previa o uso como tal marca, dará derecho al primitivo propietario a pedir su cancelación o denegación de acuerdo con las estipulaciones de esta Convención y a solicitar y obtener la protección para sí, considerándose que dicha protección se retrotraerá a la fecha de la solicitud cancelada o denegada.

Article 12.

Any registration or deposit which has been effected in one of the Contracting States, or any pending application for registration or deposit, made by an agent, representative or customer of the owner of a mark in which a right has been acquired in another Contracting State through its registration, prior application or use, shall give to the original owner the right to demand its cancellation or refusal in accordance with the provisions of this Convention and to request and obtain the protection for himself, it being considered that such protection shall revert to the date of the application of the mark so denied or cancelled.

Artículo 13.

El uso de una marca por su propietario en una forma distinta de la forma en que la marca ha sido registrada en cualquiera de los Estados Contratantes, por lo que respecta a elementos secundarios o no substanciales, no acarreará la nulificación del registro ni afectará la protección de la marca.

En caso de que la forma o los elementos distintivos de la marca sean sustancialmente cambiados, o que sea modificada o aumentada la lista de los productos a que vaya a aplicarse, podrá exigirse al propietario que solicite un nuevo registro, sin perjuicio de la protección de la marca original o de la lista original de los productos.

Los requisitos que las leyes de los Estados Contratantes exijan con respecto a la leyenda que indica la autorización del uso de las marcas, se considerarán satisfechos por lo que toca a los

Article 13.

The use of a trade mark by its owner in a form different in minor or non-substantial elements from the form in which the mark has been registered in any of the Contracting States, shall not entail forfeiture of the registration or impair the protection of the mark.

In case the form or distinctive elements of the mark are substantially changed, or the list of goods to which it is to be applied is modified or increased, the proprietor of the mark may be required to apply for a new registration, without prejudice to the protection of the original mark or in respect to the original list of goods.

The requirements of the laws of the Contracting States with respect to the legend which indicates the authority for the use of trade marks, shall be deemed fulfilled in respect to goods of

Artigo 12.

Qualquer registro ou deposito que se tenha effectuado em um dos Estados Contractantes, ou qualquer pedido de registro ou deposito pendente, feito por um agente, representante ou freguez do dono de uma marca sobre a qual tenha sido adquirido um direito previo em outros Estados Contractantes mediante registro, pedido ou uso previo, dará ao dono original o direito de requerer a sua revogação ou denegação de accordo com as disposições desta Convenção e requerer e obter protecção para si, considerando-se que tal protecção reverterá á data do pedido da marca denegada ou cancellada.

Article 12.

Tout enregistrement ou dépôt qui a été effectué dans l'un des États contractants, ou toute demande pendante d'enregistrement ou de dépôt faite par un agent, représentant ou client du propriétaire d'une marque qui a acquis droit de protection dans un autre État contractant par l'enregistrement, demande d'enregistrement ou usage antérieur, donnera à ce propriétaire le droit de demander cancellation ou refus de la marque ainsi présentée conformément aux dispositions de cette Convention, ainsi que de demander et d'obtenir la protection pour lui-même; cette protection étant considerée comme reportée rétroactivement à la date de la demande ainsi rejetée ou cancellée.

Artigo 13.

O uso de uma marca pela seu dono em uma forma que apresente differenças nos elementos secundarios ou não essenciaes da forma em que a marca tenha sido registada em qualquer dos Estados Contractantes, não prejudicará o registro nem affectará a protecção da marca.

Caso a forma ou os elementos distinctivos sejam substancialmente alterados, ou a lista de mercadorias aos quaes se applicar for modificada ou augmentada, o proprietario da marca poderá ser obrigado a requerer novo registro, sem prejuizo da marca original ou no que respeita á lista original de mercadorias.

As exigencias das leis dos Estados Contractantes relativas aos dizeres que indicam a autoridade para o uso de marcas de fabrica, serão consideradas satisfeitas com respeito a mercadorias de origem

Article 13.

L'usage d'une marque de fabrique par son propriétaire sous une forme comportant des variantes d'éléments secondaires ou non substantiels de la forme sous laquelle elle a été enregistrée, n'entraînera pas l'annullation de l'enregistrement ni n'affectera pas la protection de la marque.

Au cas où la forme ou éléments distinctifs de la marque sont substantiellement changés, ou que la liste des marchandises auxquelles elle doit s'appliquer est modifiée ou augmentée, le propriétaire de la marque peut être invité à faire une demande pour un nouvel enregistrement, sans préjudice de la protection de la marque originale, ou quant à la liste original de produits.

Les prescriptions établies par la loi des États contractants quant à la formule qui indique le droit à l'usage des marques de fabrique seront considérées comme remplies en ce qui concerne les mar-

productos de origen extranjero, si dichas marcas llevan las palabras o indicaciones autorizadas legalmente en el país de origen de los productos.

Capítulo III.

DE LA PROTECCIÓN DEL NOMBRE COMERCIAL

Artículo 14.

El nombre comercial de las personas naturales o jurídicas domiciliadas o establecidas en cualquiera de los Estados Contratantes será protegido en todos los demás sin necesidad de registro o depósito, forme o no parte de una marca.

Artículo 15.

Se entenderá por nombre comercial el propio nombre y apellidos que el fabricante, industrial, comerciante o agricultor particular use en su negocio para darse a conocer como tal, así como la razón social, denominación o título adoptado y usado legalmente por las sociedades, corporaciones, compañías o entidades fabriles, industriales, comerciales o agrícolas, de acuerdo con las disposiciones de sus respectivas leyes nacionales.

Artículo 16.

La protección que esta Convención otorga a los nombres comerciales consistirá:

(*a*) en la prohibición de usar o adoptar un nombre comercial idéntico o engañosamente semejante al legalmente adoptado y usado por otro fabricante, industrial, comerciante o agricultor dedicado al propio giro en cualquiera de los Estados Contratantes; y

foreign origin if such marks carry the words or indications legally used or required to be used in the country of origin of the goods.

Chapter III.

PROTECTION OF COMMERCIAL NAMES

Article 14.

Trade names or commercial names of persons entitled to the benefits of this Convention shall be protected in all the Contracting States. Such protection shall be enjoyed without necessity of deposit or registration, whether or not the name forms part of a trade mark.

Article 15.

The names of an individual, surnames and trade names used by manufacturers, industrialists, merchants or agriculturists to denote their trade or calling, as well as the firm's name, the name or title legally adopted and used by associations, corporations, companies or manufacturing, industrial, commercial or agricultural entities, in accordance with the provisions of the respective national laws, shall be understood to be commercial names.

Article 16.

The protection which this Convention affords to commercial names shall be:

(*a*) to prohibit the use or adoption of a commercial name identical with or deceptively similar to one legally adopted and previously used by another engaged in the same business in any of the Contracting States; and

estrangeira, desde que taes marcas tragam as palavras ou as indicações legalmente usados ou cujo uso seja exigido no paiz de origem das mercadorias.

Capitulo III.

Protecção de nomes commerciaes.

Artigo 14.

Os nomes commerciaes com direito aos beneficios desta Convenção serão protegidos em todos os Estados Contractantes. Gozarão desta protecção sem necessidade de deposito ou registro, quer o nome faça parte de uma marca de fabrica quer não.

Artigo 15.

Os nomes de um individuo, sobrenomes e nomes commerciaes usados por fabricantes, industriaes, negociantes ou agricultores para indicar o seu negocio ou officio, assim como o nome da firma, o nome ou titulo legalmente adoptado e usado por associações, corporações, companhias ou entidades fabris, industriaes, commerciaes ou agricolas de accordo com as disposições das respectivas leis nacionaes, serão considerados como sendo nomes commerciaes.

Artigo 16.

A protecção que esta Convenção outorga aos nomes commerciaes será:

(a) prohibir o uso ou adopção de um nome commercial identico ou enganosamente semelhante ao legalmente adoptado e previamente usado por outrem occupado no mesmo negocio em qualquer dos Estados Contractantes; e

chandises d'origine étrangère si ces marques portent les mots ou indications légalement employés ou exigés dans le pays d'origine de ces marchandises.

Chapitre III.

Protection du nom commercial

Article 14.

Le nom commercial de personnes ou de sociétés civiles établies ou domiciliées dans l'un quelconque des États contractants sera protégé dans tous les autres sans qu'il soit besoin d'enregistrement ou de dépôt, que ce nom commercial forme partie ou non de la marque de fabrique.

Article 15.

Les noms d'un individu, noms de famille et raison sociale employés par les fabricants, industriels, commerçants ou agriculteurs pour désigner leur commerce ou leur industrie, aussi bien que le nom de leur firme, le nom ou titre légalement adopté et utilisé par les associations, corporations, compagnies ou sociétés civiles ou manufacturières, industrielles, commerciales ou agricoles, conformes aux dispositions des lois nationales respectives, seront considérés comme nom commercial.

Article 16.

La protection que la présente Convention accorde au nom commercial consistera:

(a) dans la prohibition de faire usage ou d'adopter un nom commercial identique ou d'une similitude pouvant prêter à confusion avec celle adoptée et antérieurement employée par quelqu'un d'autre engagé dans le même genre d'affaires dans l'un quelconque des États contractants; et

(*b*) en la prohibición de usar, registrar o depositar una marca cuyo elemento distintivo principal esté formado por todo o parte esencial del nombre comercial legal y anteriormente adoptado y usado por otra persona natural o jurídica domiciliada o establecida en cualquiera de los Estados Contratantes y dedicada a la fabricación o comercio de productos o mercancías de la propia clase a que se destine la marca.

Artículo 17.

Todo fabricante, industrial, comerciante o agricultor domiciliado o establecido en cualquiera de los Estados Contratantes podrá oponerse dentro de los términos y por los procedimientos legales del país de que se trate, a la adopción, uso, registro o depósito de una marca destinada a productos o mercancías de la misma clase que constituya su giro o explotación, cuando estime que el o los elementos distintivos de tal marca puedan producir en el consumidor error o confusión con su nombre comercial, legal y anteriormente adoptado y usado.

Artículo 18.

Todo fabricante, industrial, comerciante o agricultor domiciliado o establecido en cualquiera de los Estados Contratantes podrá solicitar y obtener de acuerdo con las disposiciones y preceptos legales del país respectivo, la prohibición de usar, o la cancelación del registro o depósito de cualquier nombre comercial o marca destinados a la fabricación, comercio o producción de artículos o mercancías de la misma clase en que él trafica, probando:

(*b*) to prohibit the use, registration or filing of a trade mark the distinguishing elements of which consist of the whole or an essential part of a commercial name legally adopted and previously used by another owner domiciled or established in any of the Contracting States, engaged in the manufacture, sale or production of products or merchandise of the same kind as those for which the trade mark is intended.

Article 17.

Any manufacturer, industrialist, merchant or agriculturist domiciled or established in any of the Contracting States, may, in accordance with the law and the legal procedure of such countries, oppose the adoption, use, registration or deposit of a trade mark for products or merchandise of the same class as those sold under his commercial name, when he believes that such trade mark or the inclusion in it of the trade or commercial name or a simulation thereof may lead to error or confusion in the mind of the consumer with respect to such commercial name legally adopted and previously in use.

Article 18.

Any manufacturer, industrialist, merchant or agriculturist domiciled or established in any of the Contracting States may, in accordance with the law and procedure of the country where the proceeding is brought, apply for and obtain an injunction against the use of any commercial name or the cancellation of the registration or deposit of any trade mark, when such name or mark is intended for use in the manufacture, sale or production of articles or merchandise of the same class, by proving:

(*b*) prohibir o uso, registro ou deposito de uma marca de fabrica cujos elementos distinctivos sejam formados, no todo ou em uma parte essencial, de um nome legalmente adoptado e previamente usado por outro proprietario domiciliado ou estabelecido em qualquer dos Estados Contractantes, occupado na fabricação, venda ou producção de productos ou mercadorias da mesma classe que aquelles aos quaes se destina a marca.

Artigo 17.

Qualquer fabricante, industrial, negociante ou agricultor domiciliado ou estabelecido em qualquer dos Estados Contractantes, poderá de accordo com a lei e o procedimento legal de taes paizes, se oppor á adopção, uso, registro ou deposito de uma marca para productos ou mercadorias da mesma classe que as vendidas sob o seu nome commercial, quando julgar que tal marca ou a inclusão nella de um nome commercial ou simulação do mesmo, possa conduzir a erro ou confusão no espirito do consumidor relativamente ao referido nome legalmente adoptado e previamente usado.

Artigo 18.

Qualquer fabricante, industrial, negociante ou agricultor, domiciliado ou estabelecido em qualquer dos Estados Contractantes, poderá, de accordo com a lei e as praxes do paiz em que correr o procedimento, pedir e obter ordem contra o uso de qualquer nome ou o cancellamento do registro ou deposito de qualquer marca, quando tal marca ou nome for destinado a ser empregado na fabricação, venda ou producção de artigos ou mercadorias da mesma classe, comtanto que prove:

(*b*) dans la prohibition de l'usage, de l'enregistrement ou du dépôt d'une marque de fabrique dont les éléments distinctifs reproduisent tout, ou partie essentielle, d'un nom commercial légalement adopté et précédemment employé par un autre propriétaire domicilié ou établi dans l'un quelconque des États contractants, engagé dans la manufacture, la vente ou la production de produits ou marchandises du même genre que ceux auxquels la marque de fabrique est destinée.

Article 17.

Tout fabricant, industriel, commerçant ou agriculteur domicilié ou établi dans l'un quelconque des États contractants peut, en se conformant à la loi et à la procédure de ces pays, faire opposition à l'adoption, l'usage, l'enregistrement ou le dépôt d'une marque de fabrique pour des produits ou marchandises de la même espèce que celles qui se vendent sous son nom commercial, lorsqu'il estime les éléments distinctifs d'une telle marque peuvent produire chez le consommateur erreur ou confusion avec tel nom commercial légalement acquis et antérieurement employé.

Article 18.

Tout manufacturier, industriel, commerçant, ou agriculteur domicilié ou établi dans l'un quelconque des États contractants peut demander et obtenir conformément aux dispositions légales du pays intéressé, la prohibition de l'usage ou la cancellation de l'enregistrement ou dépôt de tout nom commercial ou marque de fabrique lorsque ce nom ou cette marque est destinée à l'usage de la manufacture, pour la vente ou la production d'articles ou de marchandises de la même espèce, en prouvant:

(*a*) que el nombre comercial o marca cuya cancelación pretende es sustancialmente idéntico o engañosamente semejante a su propio nombre comercial legalmente adoptado y usado con anterioridad en cualquiera de los Estados Contratantes para la fabricación o comercio de productos o mercancías de la misma clase, y

(*b*) que con anterioridad a la adopción y uso del nombre comercial, o a la adopción y uso o solicitud de registro o depósito de la marca cuya cancelación pretende, empleó y que continúa empleando en la fabricación o comercio de los mismos productos o mercancías su propio nombre comercial, legal y anteriormente adoptado y usado en cualquiera de los Estados Contratantes, en o dentro del Estado en que solicite la cancelación.

Artículo 19.

La protección del nombre comercial se impartirá de acuerdo con la legislación interna y las estipulaciones de esta Convención, de oficio, cuando las autoridades gubernativas o administrativas competentes tengan conocimiento o pruebas ciertas de su existencia y uso legal, o a petición de parte interesada en los casos comprendidos en los artículos anteriores.

Capítulo IV.

de la represión de la competencia desleal

Artículo 20.

Todo acto o hecho contrario a la buena fé comercial o al normal y honrado desenvolvimiento de las actividades industriales o mercantiles será considerado como

(*a*) that the commercial name or trade mark, the enjoining or cancellation of which is desired, is identical with or deceptively similar to his commercial name already legally adopted and previously used in any of the Contracting States, in the manufacture, sale or production of articles of the same class, and

(*b*) that prior to the adoption and use of the commercial name, or to the adoption and use or application for registration or deposit of the trade mark, the cancellation of which is sought, or the use of which is sought to be enjoined, he used and continues to use for the manufacture, sale or production of the same products or merchandise his commercial name adopted and previously used in any of the Contracting States or in the State in which cancellation or injunction is sought.

Article 19.

The protection of commercial names shall be given in accordance with the internal legislation and by the terms of this Convention, and in all cases where the internal legislation permits, by the competent governmental or administrative authorities whenever they have knowledge or reliable proof of their legal existence and use, or otherwise upon the motion of any interested party.

Chapter IV.

repression of unfair competition.

Article 20.

Every act or deed contrary to commercial good faith or to the normal and honorable development of industrial or business activities shall be considered as

(*a*) que o nome commercial ou marca de fabrica, cuja prohibição ou cancellamento se requer, é identico ou enganosamente semelhante ao seu nome commercial já legalmente adoptado e previamente usado em qualquer dos Estados Contractantes, na fabricação, venda, ou producção de artigos da mesma classe, e

(*b*) que anteriormente á adopção e uso do nome commercial ou á adopção e uso ou pedido de registro da marca de fabrica, cujo cancellamento se requer, ou cujo uso se trata de prohibir, elle usava e continua a usar para o fabrico, venda ou producção dos mesmos productos ou mercadorias o seu nome commercial adoptado e previamente usado em qualquer dos Estados Contractantes ou no Estado em que se requer cancellamento ou prohibição.

Artigo 19.

A protecção de nomes commerciaes será outorgada de accordo com a legislação interna e os termos desta Convenção, e em todos os casos em que o permittir a legislação interna, pelas competentes autoridades governamentaes ou administrativas, sempre que possuirem conhecimento ou provas cabaes da sua existencia e uso illegal ou então a pedido de qualquer parte interessada.

Capitulo IV.

REPRESSÃO DA CONCURRENCIA DESLEAL.

Artigo 20.

Toda a acção ou acto contrario á boa fé ou ao desenvolvimento normal e honesto das actividades industriaes ou commerciaes, será considerado como sendo concur-

(*a*) que le nom commercial ou la marque de fabrique dont la cancellation est poursuivie est identique ou d'une similitude pouvant prêter à confusion avec son nom commercial déjà légalement adopté et antérieurement employé dans l'un quelconque des États contractants, dans la manufacture, la vente ou la production d'articles de même espèce, et

(*b*) qu'antérieurement à l'adoption et à l'usage du nom commercial, ou à l'adoption et à l'usage ou à la demande d'enregistrement ou de dépôt de la marque de fabrique dont la cancellation est poursuivie, il faisait usage et continue à faire usage pour la manufacture, la vente ou la production des mêmes articles ou marchandises de son nom commercial adopté et antérieurement employé dans l'un quelconque des États contractants ou dans l'État dans lequel cette cancellation est poursuivie.

Article 19.

La protection du nom commercial sera accordée conformément à la législation nationale et aux termes de la présente Convention, et dans tous les cas où la législation nationale le permet, soit par les autorités gouvernementales ou administratives compétentes, toutes les fois qu'elles auront connaissance ou acquis la preuve fondée de son existence et usage légal, soit à la requête de toute partie intéressée.

Chapitre IV.

RÉPRESSION DE LA CONCURRENCE DÉLOYALE.

Article 20.

Tout acte ou fait contraire à la bonne foi commerciale ou au développement normal et honorable d'activités industrielles ou commerciales sera considéré comme

de competencia desleal y, por tanto, injusto y prohibido.

Artículo 21.

Se declaran de competencia desleal los siguientes actos, y al no estar señaladas sus penas en la legislación interna de cada Estado Contratante, se reprimirán de acuerdo con las prescripciones de esta Convención:

(*a*) Los actos que tengan por objeto dar a entender, directa o indirectamente, que los artículos o actividades mercantiles de un fabricante, industrial, comerciante o agricultor pertenecen o corresponden a otro fabricante, industrial, comerciante o agricultor de alguno de los otros Estados Contratantes, ya sea apropiándose o simulando marcas, símbolos, nombres distintivos, imitando etiquetas, envases, recipientes, nombres comerciales u otros medios usuales de identificación en el comercio.

(*b*) Las falsas descripciones de los artículos, usando palabras, símbolos y otros medios que tiendan a engañar al público en el país donde estos actos ocurran, con respecto a la naturaleza, calidad o utilidad de las mercancías.

(*c*) Las falsas indicaciones de origen o procedencia geográficos de los artículos, por medio de palabras, símbolos, o de otra manera, que tiendan a engañar en ese respecto al público del país donde estos hechos ocurran.

(*d*) Lanzar al mercado u ofrecer o presentar en venta al público un artículo, producto o mercancía bajo forma o aspecto tales que aun cuando no contenga directa ni indirectamente indicación de origen o procedencia geográficos determinados, dé o produzca la impresión, ya por los dibujos, elementos ornamentales o idioma empleado en

unfair competition and, therefore, unjust and prohibited.

Article 21.

The following are declared to be acts of unfair competition and unless otherwise effectively dealt with under the domestic laws of the Contracting States shall be repressed under the provisions of this Convention:

(*a*) Acts calculated directly or indirectly to represent that the goods or business of a manufacturer, industrialist, merchant or agriculturist are the goods or business of another manufacturer, industrialist, merchant or agriculturist of any of the other Contracting States, whether such representation be made by the appropriation or simulation of trade marks, symbols, distinctive names, the imitation of labels, wrappers, containers, commercial names, or other means of identification;

(*b*) The use of false descriptions of goods, by words, symbols or other means tending to deceive the public in the country where the acts occur, with respect to the nature, quality, or utility of the goods;

(*c*) The use of false indications of geographical origin or source of goods, by words, symbols, or other means which tend in that respect to deceive the public in the country in which these acts occur;

(*d*) To sell, or offer for sale to the public an article, product or merchandise of such form or appearance that even though it does not bear directly or indirectly an indication of origin or source, gives or produces, either by pictures, ornaments, or language employed in the text, the impression of being a product, article or commodity originating

rencia desleal e, portanto, injusto e prohibido.

Artigo 21.

Os seguintes actos são declarados actos de concurrencia desleal, e, a não ser que para os mesmos haja legislação effectiva em outras categorias de leis internas dos paizes contractantes, serão reprimidos de accordo com as disposições desta Convenção.

(*a*) Os actos destinados directa ou indirectamente a representar as mercaderias ou o negocio de um fabricante, industrial, negociante ou agricultor como sendo mercadorias ou negocio de outro fabricante, industrial, negociante ou agricultor de um dos outros Estados Contractantes, quer tal representação se effectue pela apropriação ou simulação de marcas de fabrica, symbolos, nomes distinctivos, a imitação de rotulos, envolucros, envolutorios, nomes commerciaes, quer por outros meios de identificação;

(*b*) O emprego de falsas descripções de mercadorias, por meio de palavras, symbolos e outros meios tendentes a enganar o publico no paiz em que se dão taes actos, com respeito á natureza, qualidade, ou utilidade das mercadorias;

(*c*) O uso de falsas indicações da origem ou procedencia geographica das mercadorias, por meio de palavras ou outros symbolos que tendam neste sentido a enganar o publico no paiz em que taes actos se dão;

(*d*) Vender, ou offerecer a venda ao publico um artigo, producto ou mercadoria de tal forma ou apparencia que, embora não traga uma indicação directa ou indirecta de origem, ou procedencia, dê ou produza por meio de estampas, ornamentos, ou linguagem empregada no texto, a impressão de ser um producto, artigo ou mercadoria originado, fabricado

concurrence déloyale et, par suite, comme injuste et prohibé.

Article 21.

Les actes ci-dessous sont déclarés actes de concurrence déloyale et, à moins que la loi nationale des États contractants n'en traite ailleurs, ils seront réprimés conformément aux dispositions de la présente Convention:

(*a*) Les actes qui tendent à présenter directement ou indirectement les marchandises ou affaires d'un fabricant, d'un commerçant ou d'un agriculteur comme marchandises ou affaires d'un autre fabricant, commerçant ou agriculteur de l'un des États contractants, soit par l'appropriation ou la contrefaçon de marques de fabrique, de symboles, de dénominations distinctives, soit par l'imitation d'étiquettes, d'emballages, de dénominations commerciales ou d'autres moyens d'identification;

(*b*) L'emploi de fausses descriptions de marchandises, l'emploi de mots, symboles et autres moyens qui tendent à tromper le public dans le pays où ces actes ont lieu relativement à la nature, la qualité ou l'utilité des marchandises;

(*c*) L'emploi de fausses indications d'origine ou de provenance géographique des marchandises, à l'aide de mots ou autres symboles ou moyens qui tendent à cet égard à tromper le public du pays dans lequel ces faits se produisent;

(*d*) La vente ou la mise en vente publique d'un article, produit ou marchandise d'une telle forme ou apparence que, bien qu'il ne porte pas directement ou indirectement une indication d'origine, ou de provenance déterminé, donne ou laisse l'impression, soit par les gravures, les motifs d'ornementation ou le langage employé dans le texte, d'être un

el texto, de ser un producto, artículo o mercancía originado, manufacturado o producido en otro de los Estados Contratantes.

(e) Cualesquiera otros hechos o actos contrarios a la buena fé en materias industriales, comerciales o agrícolas que, por su naturaleza o finalidad, puedan considerarse análogos o asimilables a los anteriormente mencionados.

Artículo 22.

Los Estados Contratantes que aún no hayan legislado sobre los actos de competencia desleal mencionados en este capítulo, aplicarán a ellos las sanciones contenidas en su legislación sobre marcas, o en cualesquiera otras leyes, y ordenarán la suspensión de dichos actos a petición de las personas perjudicadas, ante las cuales los causantes serán también responsables por los daños y perjuicios que les hayan ocasionado.

Capítulo V.

DE LA REPRESIÓN DE LAS FALSAS INDICACIONES DE ORIGEN Y PROCEDENCIA GEOGRÁFICOS

Artículo 23.

Será considerada falsa e ilegal, y por tanto prohibida, toda indicación de origen o procedencia que no corresponda realmente al lugar en que el artículo, producto o mercancía fué fabricado, manufacturado o recolectado.

Artículo 24.

A los efectos de esta Convención se considerará como indicación de origen o procedencia geográficos, consignar o hacer aparecer en alguna marca, etiqueta, cubierta, envase, envoltura, precinta, de

manufactured or produced in one of the other Contracting States;

(e) Any other act or deed contrary to good faith in industrial, commercial or agricultural matters which, because of its nature or purpose, may be considered analogous or similar to those above mentioned.

Article 22.

The Contracting States which may not yet have enacted legislation repressing the acts of unfair competition mentioned in this chapter, shall apply to such acts the penalties contained in their legislation on trade marks or in any other statutes, and shall grant relief by way of injunction against the continuance of said acts at the request of any party injured; those causing such injury shall also be answerable in damages to the injured party.

Chapter V.

REPRESSION OF FALSE INDICATIONS OF GEOGRAPHICAL ORIGIN OR SOURCE.

Article 23.

Every indication of geographical origin or source which does not actually correspond to the place in which the article, product or merchandise was fabricated, manufactured, produced or harvested, shall be considered fraudulent and illegal, and therefore prohibited.

Article 24.

For the purposes of this Convention the place of geographical origin or source shall be considered as indicated when the geographical name of a definite locality, region, country or nation,

ou produzido em uma das Nações Contractantes;

(e) Qualquer outra acção ou acto contrario á boa fé em materias industriaes, commerciaes e agricolas que, por causa de sua natureza ou fim, possa ser considerado como sendo analogo ou semelhante aos acima mencionados.

Artigo 22.

Os Estados Contractantes que não tenham ainda decretado legislação sobre os actos de concurrencia desleal mencionados neste artigo applicarão a taes actos as penas contidas na sua legislação sobre marcas de fabrica, ou em quaesquer outras leis e ordenarão a cessação dos referidos actos a pedido de qualquer parte prejudicada, que terá o direito de exigir das partes culpadas indemnização pelos damnos soffridos.

CAPITULO V.

REPRESSÃO DE FALSAS INDICAÇÕES DE ORIGEM OU PROCEDENCIA GEOGRAPHICA.

Artigo 23.

Toda a indicação de origem ou procedencia geographica que não corresponder de facto ao logar em que o artigo, producto ou mercadoria foi fabricado, manufacturado, produzido ou colhido, será considerada fraudulenta e illegal, e, portanto, prohibida.

Artigo 24.

Para os fins desta Convenção, o logar de origem ou procedencia geographica será considerado como sendo indicado quando o nome geographico de uma determinada localidade, região, con-

produit, article ou marchandise, fabriqué ou produit dans l'un des États contractants, ou qui en soit originaire.

(e) Tout autre fait ou acte contraire à la bonne foi en matière industrielle, commerciale ou agricole qui, par sa nature ou son objet peut être considéré comme analogue ou assimilable à ceux ci-dessus mentionnés.

Article 22.

Les États contractants qui n'auraient encore établi aucune législation pour la répression des actes de concurrence déloyale mentionnés dans ce chapitre appliqueront à ces actes les sanctions prévues dans leur législation sur les marques de fabrique ou par toute autre loi, et ordonneront la cessation de ces actes sur requête des parties lésées. L'auteur du préjudice causé sera également passible d'une condamnation en dommages intérêts pour les torts occasionnés.

CHAPITRE V.

RÉPRESSION DE FAUSSES INDICATIONS D'ORIGINE ET DE PROVENANCE GÉOGRAPHIQUE.

Article 23.

Toute indication d'origine ou provenance qui ne correspond pas exactement au lieu où l'article, le produit, ou la marchandise a été fabriqué, obtenu ou récolté sera considérée comme frauduleuse et illégale, et par conséquent prohibée.

Article 24.

Dans l'intention de cette Convention le lieu d'origine ou de provenance sera considéré comme indiqué lorsque le nom géographique d'une localité, d'une région, d'un pays ou d'une nation déter-

cualquier artículo, producto o mercancía, o directamente sobre el mismo, el nombre geográfico de una localidad, región, país o nación determinada, bien sea de modo expreso y directo, o indirectamente, siempre que dicho nombre geográfico sirva de base o raíz a las frases, palabras o expresiones que se empleen.

either expressly and directly, or indirectly, appears on any trade mark, label, cover, packing or wrapping, of any article, product or merchandise, directly or indirectly thereon, provided that said geographical name serves as a basis for or is the dominant element of the sentences, words or expressions used.

Artículo 25.

Los nombres geográficos que indiquen origen o procedencia no son susceptibles de apropiación individual, pudiendo usarlos libremente para indicar el origen o procedencia de los productos o mercancías o su propio domicilio comercial, cualquier fabricante, industrial, comerciante o agricultor establecido en el lugar indicado o que comercie con los productos que se originen en éste.

Article 25.

Geographical names indicating geographical origin or source are not susceptible of individual appropriation, and may be freely used to indicate the origin or source of the products or merchandise or his commercial domicile, by any manufacturer, industrialist, merchant or agriculturist established in the place indicated or dealing in the products there originating.

Artículo 26.

La indicación de origen o procedencia geográficos, fijada o estampada sobre un producto o mercancía, deberá corresponder exactamente al lugar en que dicho producto o mercancía ha sido fabricado, manufacturado o recolectado.

Article 26.

The indication of the place of geographical origin or source, affixed to or stamped upon the product or merchandise, must correspond exactly to the place in which the product or merchandise has been fabricated, manufactured or harvested.

Artículo 27.

Quedan exceptuadas de las disposiciones contenidas en los anteriores artículos aquellas denominaciones, frases o palabras que, constituyendo en todo o en parte términos geográficos, hayan pasado, por los usos constantes, universales y honrados del comercio, a formar el nombre o designación propias del artículo, producto o mercancía a que se apliquen, no estando comprendidas, sin embargo, en esta excepción las indicaciones regionales de origen de

Article 27.

Names, phrases or words, constituting in whole or in part geographical terms which through constant, general and reputable use in commerce have come to form the name or designation itself of the article, product or merchandise to which they are applied, are exempt from the provisions of the preceding articles; this exception, however, does not include regional indications of origin of industrial or agricultural products the quality and reputa-

dado ou nação, quer expressamente e directamente, quer indirectamente, apparecer sobre qualquer marca de fabrica, rotulo, coberta, acondicionamento ou envolucro, de qualquer artigo producto ou mercadoria, directa ou indirectamente sobre a mesma, com tanto que tal nome geographico sirva como base ou motivo dominante das phrases, palavras ou expressões empregadas.

Artigo 25.

Os nomes geographicos indicativos de origem ou procedencia geographica não são susceptiveis de apropriação individual, e podem ser livremente usados pelo fabricante, industrial, negociante ou agricultor estabelecido no logar indicado ou negociando com productos que ahi se originem para indicar a origem de productos ou mercadorias ou o seu domicilio.

Artigo 26.

A indicação do logar de origem, ou procedencia geographica, appensa ou carimbada sobre o artigo, producto ou mercadoria deve corresponder exactamente ao logar em que o referido artigo ou mercadoria tenha sido fabricado, manufacturado ou colhido.

Artigo 27.

Os nomes, phrases ou palavras, que constituam no todo ou em parte termos geographicos, que, mediante uso constante, universal, e honroso no commercio tenham chegado a formar o nome ou a propria designação do artigo, producto ou mercadoria ao qual se applicam, são isentos das disposições contidas nos artigos anteriores; esta excepção, entretanto, não inclue indicações regionaes de origem de productos industriaes ou agricolas cuja qualidade e re-

minée figure soit expressément et directement soit indirectement sur toute marque de fabrique, l'étiquette, couvercle, empaquetage, enveloppe, etc., de tout article, produit, ou de toute marchandise,—ou directement sur ceux-ci, pourvu que les dits noms géographiques servent de base ou d'élément dominant aux phrases, mots ou expressions employés.

Article 25.

Les noms géographiques indiquant l'origine ou la provenance géographique ne sont pas susceptibles d'appropriation individuelle; et peuvent être employés librement pour indiquer l'origine ou la provenance des produits ou marchandises, ou le domicile commercial de tout fabricant, industriel, commerçant ou agriculteur établi sur le lieu indiqué ou trafiquant de produits qui en sont originaires.

Article 26.

L'indication du lieu d'origine ou de provenance géographique attachée ou apposée sur l'article, produit ou marchandise doit correspondre exactement au lieu dans lequel le dit article ou marchandise a été fabriqué, manufacturé ou récolté.

Article 27.

Les noms, phrases ou mots constituant en tout ou en partie des termes géographiques qui par suite d'un usage constant général et connu qui en est fait dans le commerce en sont venus à constituer le nom ou la désignation même de l'article, produit ou marchandise auquel ils sont appliqués sont exempts des dispositions des articles précédents; cette exception toutefois n'inclut pas les indications de régions d'origine de produits industriels ou agri-

productos industriales o agrícolas cuya calidad y aprecio por parte del público consumidor dependa del lugar de producción u origen.

Artículo 28.

A falta de disposiciones especiales que repriman las falsas indicaciones de origen o procedencia geográficos, se aplicarán a este fin las respectivas leyes sanitarias o las referentes a la protección marcaria en los Estados Contratantes.

Capítulo VI.

DE LAS SANCIONES

Artículo 29.

Queda prohibido manufacturar, exportar, importar, distribuir, o vender artículos o productos que infrinjan directa o indirectamente alguna de las modalidades señaladas en esta Convención para la protección marcaria, la protección y defensa del nombre comercial, la represión de la competencia desleal, y la represión de las falsas indicaciones de origen o procedencia geográficos.

Artículo 30.

Cualquier acto de los prohibidos por esta Convención será reprimido por las autoridades gubernativas, administrativas o judicales competentes del Estado en que se cometa, por los medios y procedimientos legales que en dicho país rijan, ya de oficio, ya a petición de parte interesada, la que podrá ejercitar las acciones y derechos que las leyes le concedan para ser indemnizada de los daños y perjuicios recibidos, pudiendo ser decomisados, destruídos o inutilizados, según el caso,

tion of which to the consuming public depend on the place of production or origin.

Article 28.

In the absence of any special remedies insuring the repression of false indications of geographical origin or source, remedies provided by the domestic sanitary laws, laws dealing with misbranding and the laws relating to trade marks or trade names, shall be applicable in the Contracting States.

Chapter VI.

REMEDIES.

Article 29.

The manufacture, exportation, importation, distribution, or sale is forbidden of articles or products which directly or indirectly infringe any of the provisions of this Convention with respect to trade mark protection; protection and safeguard of commercial names; repression of unfair competition; and repression of false indications of geographical origin or source.

Article 30.

Any act prohibited by this Convention will be repressed by the competent administrative or judicial authorities of the government of the state in which the offense was committed, by the legal methods and procedure existing in said country, either by official action, or at the request of interested parties, who may avail themselves of the rights and remedies afforded by the laws to secure indemnification for the damage and loss suffered; the articles, products or merchandise

putação não dependam para o consummidor do logar de producção ou origem.

Artigo 28.

Na ausencia de quaesquer recursos especiaes que assegurem a repressão de falsas indicações de origem ou procedencia geographica, serão applicaveis nos Estados contractantes os recursos providos pelas leis sanitarias, as leis que tratem da marcação erronea e as leis relativas a marcas de fabrica ou nomes commerciaes.

CAPITULO VI.

RECURSOS.

Artigo 29.

É prohibida a fabricação, exportação, importação, distribuição, ou venda dos artigos ou productos que directa ou indirectamente infrinjam qualquer das provisões desta Convenção no respeito á protecção de marcas de fabrica, protecção e salvaguarda de nomes commerciaes, repressão de concurrencia desleal, e repressão de falsas indicações de origem ou procedencia geographica.

Artigo 30.

Qualquer acto prohibido por esta Convenção será reprimido pelas competentes autoridades judiciaes do governo do paiz em que tenha sido commetida a offensa, pelos methodos e processos legaes existentes no referido paiz, quer mediante actuação official quer a pedido das partes interessadas, que poderão se valer dos direitos e dos recursos proporcionados pelas leis, com o fim de obter indemnização pelo damno ou perda soffridos; os artigos, productos ou mercadorias ou as

coles, dont la qualité et la valeur dépendent, aux yeux du public consommateur, du lieu de production ou d'origine.

Article 28.

Faute de dispositions spéciales qui assurent la répression de fausses indications d'origine ou de provenance géographique, les sanctions prévues par les lois sanitaires nationales ou les lois relatives aux marques de fabrique ou au nom commercial seront applicables dans les États contractants.

CHAPITRE VI.

SANCTIONS.

Article 29.

Est prohibée:—la fabrication, l'exportation, l'importation, la distribution, ou la vente d'articles ou produits qui, directement ou indirectement, enfreignent l'une des dispositions de cette Convention en ce qui concerne la protection des marques de fabrique, la protection et la sauvegarde du nom commercial, la répression de la concurrence déloyale et la répression des fausses indications d'origine, ou de provenance géographique.

Article 30.

Tout acte prohibé par la présente Convention sera réprimé par les autorités administratives ou judiciaires compétentes de l'État dans lequel le délit fut commis, suivant les méthodes et la procédure légales en vigueur dans ce pays, soit d'office, soit à la requête des parties intéressées qui peuvent se prévaloir des droits et recours que les lois leur accordent pour obtenir indemnisation pour les dommages et pertes subis. Les articles, produits, marchandises ou leur mar-

los artículos, productos o mercancías, o sus distintivos, que hayan sido objeto del acto de competencia desleal.

Artículo 31.

Cualquier fabricante, industrial, comerciante o agricultor interesado en la producción, fabricación o comercio de las mercancías o artículos afectados por el acto o hecho prohibido, así como sus agentes, representantes o apoderados en cualquiera de los Estados Contratantes y los funcionarios consulares del Estado a que corresponda la localidad o región falsamente indicada cuando se trate de un caso de falsa indicación de origen o procedencia geográficos, tendrán personalidad legal suficiente para ejercitar las acciones y recursos correspondientes y continuarlos por todos sus trámites ante las autoridades administrativas y tribunales de justicia de los Estados Contratantes.

Igual personalidad tendrán las comisiones o instituciones oficiales y los sindicatos o asociaciones que representen a la industria, a la agricultura o al comercio, legalmente establecidas para la defensa de los procedimientos honrados y leales.

Capítulo VII.

DISPOSICIONES COMUNES

Artículo 32.

Las autoridades administrativas y los tribunales de justicia de cada Estado Contratante son los únicos competentes para resolver los expedientes administrativos y los juicios contencioso-administrativos, civiles o criminales que se incoaren con motivo de la aplicación de las leyes nacionales.

or their marks, which are the instrumentality of the acts of unfair competition, shall be liable to seizure or destruction, or the offending markings obliterated, as the case may be.

Article 31.

Any manufacturer, industrialist, merchant or agriculturist, interested in the production, manufacture, or trade in the merchandise or articles affected by any prohibited act or deed, as well as his agents or representatives in any of the Contracting States and the consular officers of the state to which the locality or region falsely indicated as the place to which belongs the geographical origin or source, shall have sufficient legal authority to take and prosecute the necessary actions and proceedings before the administrative authorities and the courts of the Contracting States.

The same authority shall be enjoyed by official commissions or institutions and by syndicates or associations which represent the interests of industry, agriculture or commerce and which have been legally established for the defense of honest and fair trade methods.

Chapter VII.

GENERAL PROVISIONS

Article 32.

The administrative authorities and the courts shall have sole jurisdiction over administrative proceedings and administrative judgments, civil or criminal, arising in matters relating to the application of the national law.

suas marcas que sejam a causa do acto de concurrencia desleal, serão sujeitos a apprehensão ou serão obliteradas as marcações offensivas, conforme as exigencias do caso.

Artigo 31.

Qualquer fabricante, industrial, negociante ou agricultor interessado na producção, fabricação ou commercio de artigos affectados por qualquer acção ou acto prohibido, assim como os seus agentes ou representantes em qualquer dos Estados Contractantes e os funccionarios consulares do Estado ao qual pertencer a localidade ou região falsamente indicada como logar de origem, ou procedencia geographica, terão autoridade legal sufficiente para instituir e proseguir as necessarias acções e processos perante as autoridades administrativas e os tribunaes de justiça dos Estados Contractantes.

Egual autoridade terão as commissões ou instituições officiaes e os syndicatos ou associações que representem os interesses da industria, agricultura ou commercio, e que tenham sido legalmente organizados para a defesa de methodos de negocio honestos e leaes.

Capitulo VII.

DISPOSIÇÕES GERAES.

Artigo 32.

As autoridades administrativas e os tribunaes terão jurisdicção privativa sobre os processos administrativos e julgamentos administrativos, civis ou criminaes, oriundos de materias relativas á applicação da lei nacional.

ques qui auront fait l'objet de la concurrence déloyale seront susceptibles de saisie, de destruction ou d'être rendus inutilisables suivant le cas.

Article 31.

Tout fabricant, industriel, commerçant ou agriculteur intéressé dans la production, la fabrication ou le commerce des marchandises ou articles affectés par tout acte ou fait prohibé, aussi bien que ses agents ou représentants dans l'un des États contractants, ainsi que les agents consulaires de l'État auquel appartient la localité ou région faussement indiquée comme lieu d'origine ou de provenance auront pouvoir légal suffisant pour entreprendre toute action et poursuites consécutives par devant les autorités administratives et les tribunaux des États contractants.

Le même pouvoir appartiendra aux commissions ou institutions officielles, ainsi qu'aux syndicats ou associations qui représentent les intérêts de l'industrie, l'agriculture ou le commerce et qui sont légalement établis pour la défense des procédés honorables et honnêtes.

Chapitre VII.

DISPOSITIONS GÉNÉRALES.

Article 32.

Les autorités administratives et les tribunaux de chaque État contractant auront seule jurisdiction en matière de procédure administrative et de jugements administratifs, civils ou criminels concernant l'application de la loi nationale.

Las dudas que se suscitaren acerca de la interpretación o aplicación de los preceptos de esta Convención serán resueltas por los tribunales de justicia de cada Estado y sólo en el caso de denegación de justicia serán sometidas a arbitraje.

Any differences which may arise with respect to the interpretation or application of the principles of this Convention shall be settled by the courts of justice of each State, and only in case of the denial of justice shall they be submitted to arbitration.

Artículo 33.

Cada uno de los Estados Contratantes en que no exista, se compromete a establecer un servicio para la protección marcaria y la represión de la competencia desleal y de las falsas indicaciones de origen o procedencia geográficos, debiendo publicar en el periódico oficial del Gobierno, o en otra forma periódica, las marcas solicitadas y concedidas y las decisiones administrativas recaídas en esta materia.

Article 33.

Each of the Contracting States, in which it does not yet exist, hereby agrees to establish a protective service, for the suppression of unfair competition and false indication of geographic origin or source, and to publish for opposition in the official publication of the government, or in some other periodical, the trade marks solicited and granted as well as the administrative decisions made in the matter.

Artículo 34.

La presente Convención será susceptible de revisiones periódicas con objeto de introducir en ella las mejoras que la experiencia indique, aprovechándose de la oportunidad de la celebración de las conferencias internacionales americanas, recomendándose que cada país envíe en su delegación expertos en materias marcarias para que puedan realizar un trabajo efectivo.

Article 34.

The present Convention shall be subject to periodic revision with the object of introducing therein such improvements as experience may indicate, taking advantage of any international conferences held by the American States, to which each country shall send a delegation in which it is recommended that there be included experts in the subject of trade marks, in order that effective results may be achieved.

La administración del Estado donde deba celebrarse la Conferencia preparará sus trabajos con la ayuda de la Unión Panamericana y de la Oficina Interamericana de Marcas.

The national administration of the country in which such conferences are held shall prepare, with the assistance of the Pan American Union and the Inter-American Trade Mark Bureau, the work of the respective conference.

El director de la Oficina Interamericana podrá asistir a las sesiones de la conferencia y tomará parte en las discusiones con voz, pero sin voto.

The Director of the Inter-American Trade Mark Bureau may attend the sessions of such conferences and may take part in the discussions, but shall have no vote.

Quaesquer differenças que possam surgir com respeito á interpretação ou applição dos principios desta Convenção, serão solucionados pelos tribunaes de justiça de cada Estado, e somente no caso de denegação de justiça serão submettidas a arbitragem.

Artigo 33.

Cada um dos Estados Contractantes em que ainda não existir, ora se compromette a estabelecer um serviço protectivo para a suppressão da concurrencia desleal e falsas indicações de origem e procedencia geographica e a publicar para fins de opposição nas publicações officiaes de Governo, ou em outro periodico, a marca de fabrica solicitada e outorgada assim como as decisões administrativas tomadas sobre a materia.

Artigo 34.

A presente convenção será sujeito a revisão periodica com o fim de nella se introduzirem os melhoramentos que a experiencia possa indicar, com aproveitamento de quaesquer das conferencias internacionaes realizadas pelos Estados Americanos, ao qual cada nação enviará uma delegação na qual se recommenda sejam incluidos peritos na materia de marcas de fabrica, a fim de que sejam alcançados resultados effectivos.

A administração nacional do paiz em que se realizarem taes conferencias preparará, com o auxilio da União Pan-Americana e a Secretaria Inter-Americana de Marcas de Fabrica, o trabalho da respectiva conferencia.

O Director da Secretaria Inter-Americana poderá assistir ás sessões de taes conferencias e poderá tomar parte nas discussões, porém não terá voto.

Tous différends pouvant s'élever quant à l'interprétation ou de l'application des principes de cette Convention seront réglés par les tribunaux de chaque État, et seulement en cas de déni de justice seront soumis à l'arbitrage.

Article 33.

Chacun des États contractants dans lequel il n'existe pas encore, s'engage à établir un service de protection pour la suppression de la concurrence déloyale et des fausses indications d'origine ou de provenance géographique et à insérer, dans les publications officielles du Gouvernement ou dans tout autre périodique, les marques de fabrique soumises et agrées, aussi bien que les décisions administratives rendues en la matière.

Article 34.

La présente Convention sera sujette à une révision périodique dans le but d'y introduire telles améliorations que l'expérience peut indiquer, profitant de toutes conférences internationales tenues par les États américains, auxquelles chaque pays enverra une délégation dans laquelle il est recommandé de faire entrer des spécialistes en matière de marques de fabrique, à l'effet d'aboutir à des résultats effectifs.

L'Administration nationale du pays dans lequel se tiendront ces conférences préparera, avec l'assistance de l'Union Panaméricaine et du Bureau Interaméricain des Marques de Fabrique, le travail de la conférence.

Le directeur du Bureau Interaméricain pourra assister aux réunions de ces conférences et prendre part aux discussions, mais il n'y aura pas droit de vote.

Artículo 35.

Las estipulaciones contenidas en esta Convención tendrán fuerza de ley en aquellos Estados en que los tratados internacionales tienen ese carácter tan pronto como son ratificados por sus órganos constitucionales.

Los Estados Contratantes en que el cumplimiento de los pactos internacionales esté subordinado a la promulgación de leyes concomitantes, al aceptar en principio esta Convención se obligan a solicitar de sus órganos legislativos la adopción, en el más breve plazo posible, de la legislación que sea necesaria para ponerla en vigor, de acuerdo con sus prescripciones constitucionales.

Artículo 36.

Los Estados Contratantes convienen en que, tan pronto como esta Convención entre en vigor, las Convenciones sobre Marcas de Fábrica de 1910 y 1923 quedarán automáticamente sin efecto alguno, pero cualesquiera derechos que de acuerdo con sus estipulaciones se hayan adquirido o puedan adquirirse hasta la fecha en que entre en vigor esta Convención, continuarán siendo válidos hasta que expiren.

Artículo 37.

La presente Convención será ratificada por los Estados Contratantes de acuerdo con sus procedimientos constitucionales.

La Convención original y los instrumentos de ratificación serán depositados en la Unión Panamericana, la que enviará copia certificada del primero y comunicará aviso del recibo de dichas ratificaciones a los Gobiernos de los Estados Contratantes, entrando la Convención en vigor entre los Estados Contratantes en el orden en que vayan depositando sus ratificaciones.

Article 35.

The provisions of this Convention shall have the force of law in those States in which international treaties possess that character, as soon as they are ratified by their constitutional organs.

The Contracting States in which the fulfillment of international agreements is dependent upon the enactment of appropriate laws, on accepting in principle this Convention, agree to request of their legislative bodies the enactment of the necessary legislation in the shortest possible period of time and in accordance with their constitutional provisions.

Article 36.

The Contracting States agree that, as soon as this Convention becomes effective, the Trade Mark Conventions of 1910 and 1923 shall automatically cease to have effect; but any rights which have been acquired, or which may be acquired thereunder, up to the time of the coming into effect of this Convention, shall continue to be valid until their due expiration.

Article 37.

The present Convention shall be ratified by the Contracting States in conformity with their respective constitutional procedures.

The original Convention and the instruments of ratification shall be deposited with the Pan American Union which shall transmit certified copies of the former and shall communicate notice of such ratifications to the other signatory Governments, and the Convention shall enter into effect for the Contracting States in the order that they deposit their ratifications.

Artigo 35.

As disposições desta Convenção terão força de lei em todos os Estados em que os tratados internacionaes possuam tal caracter, desde o momento em que forem ratificadas pelos seus orgãos constitucionaes.

Os Estados Contractantes em que o cumprimento de accordos internacionaes depender da decretação de leis apropriadas ou da aceitação em principio desta convenção concordam em solicitar dos seus orgãos legislativos a decretação da necessaria legislação no mais breve periodo de tempo possivel e de accordo com as suas disposições constitucionaes.

Artigo 36.

Os Estados Contractantes concordam em que logo que esta convenção entre em vigor, a Convenção de Marcas de Fabrica de 1910 e 1923 cessarão automaticamente de vigorar, porém quaesquer direitos que tenham sido adquiridos, ou que venham a ser adquiridos de accordo com as mesmas até o momento de entrar em vigor esta convenção continuarão a ser validos até a sua devida expiração.

Artigo 37.

A presente Convenção será ratificada pelas Altas Partes Contractantes na conformidade dos seus respectivos processos constitucionaes.

A Convenção original e os instrumentos de ratificação serão depositados na União Pan-Americana, que transmittirá copias certificadas da primeira e communicará a notificação das referidas ratificações aos outros Governos Signatarios, e a convenção entrará em vigor para as Altas Partes Contractantes na ordem em que depositarem as suas ratificações.

Article 35.

Les dispositions de cette Convention auront force de loi dans les États où les traités internationaux ont ce caractère, aussitôt qu'ils ont été ratifiés par leurs organes constitutionels.

Les États contractants dans lesquels la mise en vigueur d'accords internationaux dépend de la promulgation de lois appropriées, conviennent, par l'acceptation en principe de cette Convention, à requérir de leurs corps législatifs l'adoption de la législation nécessaire dans le plus court délai possible d'accord avec leurs prescriptions constitutionnelles.

Article 36.

Les États contractants conviennent qu'aussitôt que cette Convention deviendra effective, les Conventions sur les marques de fabrique de 1910 et 1923 cesseront automatiquement d'être en vigueur, mais tous droits qui ont été acquis ou qui peuvent être acquis aux termes de celles-ci jusqu'à l'entrée en vigueur de la présente Convention continueront à être valides jusqu'à leur expiration.

Article 37.

La présente Convention sera ratifiée par les Hautes Parties contractantes conformément à leurs procédures constitutionnelles respectives.

La Convention originale et les instruments de ratification seront déposés à l'Union Panaméricaine qui en transmettra des copies certifiées et notifiera les ratifications reçues aux gouvernements signataires. La Convention entrera en vigueur pour les Hauts États contractants dans l'ordre dans lequel ils auront déposé leurs ratifications.

Esta Convención regirá indefinidamente, pero podrá ser denunciada mediante aviso anticipado de un año, transcurrido el cual, cesará en sus efectos para el Estado denunciante, quedando subsistente para los demás contratantes. La denuncia será dirigida a la Unión Panamericana, la que trasmitirá aviso de su recibo a los Gobiernos de todos los demás Estados.

Los Estados Americanos que no hayan suscrito esta Convención podrán adherirse a ella, enviando el instrumento oficial en que se consigne esta adhesión a la Unión Panamericana, la que notificará aviso de su recibo a los Gobiernos de los demás Estados Contratantes en la forma antes expresada.

En testimonio de lo cual, los delegados arriba nombrados firman la presente Convención en español, inglés, portugués y francés y estampan sus respectivos sellos.

Hecha en la ciudad de Wáshington, a los veinte días del mes de febrero de mil novecientos veintinueve.

This Convention shall remain in force indefinitely, but it may be denounced by means of notice given one year in advance, at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regards the other States. All denunciations shall be sent to the Pan American Union which will thereupon transmit notice thereof to the other Contracting States.

The American States which have not subscribed to this Convention may adhere thereto by sending the respective official instrument to the Pan American Union which, in turn, will notify the governments of the remaining Contracting States in the manner previously indicated.

In witness whereof the above named delegates have signed this Convention in English, Spanish, Portuguese and French, and thereto have affixed their respective seals.

Done in the City of Washington, on the twentieth day of February in the year one thousand nine hundred and twenty-nine.

Esta Convenção permanecerá em vigor indefinidamente, porém poderá ser denunciada por meio de notificação dada com um anno de antecedencia, á expiração do qual cessará de vigorar no que diz respeito á Parte denunciante, mas continuará a vigorar no que diz respeito aos outros Estados Contractantes. Toda a denuncia será enviada á União Pan-Americana que em seguida a transmittirá aos outros Estados Contractantes.

Os Estados Americanos que não tenham assignado esta Convenção poderão adherir a mesma enviando o respectivo instrumento official á União Pan-Americana, que, por sua vez, notificará em seguida aos Governos dos outros Estados Contractantes na maneira previamente indicada.

Em testemunho do que os delegados acima designados assignam esta Convenção em portuguez, inglez, hespanhol, e francez, e appõem á mesma os seus respectivos sellos.

Dada na Cidade de Washington aos vinte dias do mez de fevereiro do anno mil e nove centos e vinte e nove.

La présente Convention restera en vigueur indéfiniment; mais elle peut être dénoncée au moyen d'un avis donné une année d'avance, à l'expiration de laquelle elle cessera d'avoir force pour la Partie qui l'aura dénoncée; mais elle restera en vigueur en ce qui concerne les autres États contractants. Toutes les dénonciations seront addressées à l'Union Panaméricaine qui en donnera aussitôt avis aux autres États Contractants.

Les États américains qui n'ont pas signé la présente Convention peuvent y adhérer en envoyant l'instrument officiel qui constate cette adhésion à l'Union Panaméricaine qui, à son tour, en donnera avis aux Gouvernements des autres États contractants de la manière précédemment indiquée.

En foi de quoi, les délégués susnommés ont signé la présente Convention en français, en espagnol, en anglais et en portugais et y ont apposé leurs sceaux respectifs.

Fait en la ville de Washington, le vingtième jour du mois de février de l'an mil neuf cent vingt-neuf.

[SEAL.] A. GONZÁLEZ PRADA.

[SEAL.] EMETERIO CANO DE LA VEGA.

[SEAL.] JUAN VICENTE RAMÍREZ.

[SEAL.] GONZALO ZALDUMBIDE.

[SEAL.] VARELA.

[SEAL.] FRANCISCO DE MOYA.

[SEAL.] OSCAR BLANCO VIEL.

Subscribo la presente Convención en cuanto sus disposiciones no sean contrarias a la legislación nacional de mi país, haciendo reserva expresa de las disposiciones de esta Convención sobre las cuales no hay legislación en Chile.

[SEAL.] R. J. ALFARO.
[SEAL.] JUAN B. CHEVALIER.

[SEAL.] P. R. RINCONES.

[SEAL.] MANUEL CASTRO QUESADA.
[SEAL.] F. E. PIZA.

[SEAL.] GUSTAVO GUTIÉRREZ.
[SEAL.] A. L. BUFILL.

[SEAL.] ADRIÁN RECINOS.

[SEAL.] RAMIRO FERNÁNDEZ.

[SEAL.] RAOUL LIZAIRE.

[SEAL.] PABLO GARCÍA DE LA PARRA.

[SEAL.] CARLOS DELGADO DE CARVALHO.

[SEAL.] F. SUÁSTEGUI.

[SEAL.] VICENTE VITA.

[SEAL.] CARLOS IZAGUIRRE V.

[SEAL.] EDWARD S. ROGERS.
[SEAL.] THOMAS E. ROBERTSON.
[SEAL.] FRANCIS WHITE.

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PROTOCOLO SOBRE EL REGISTRO INTERAMERICANO DE MARCAS DE FÁBRICA

POR CUANTO: los Gobiernos de Perú, Bolivia, Paraguay, Ecuador, Uruguay, República Dominicana, Chile, Panamá, Venezuela, Costa Rica, Cuba, Guatemala, Haití, Colombia, Brasil, México, Nicaragua, Honduras y Estados Unidos de América, han firmado hoy en Wáshington por medio de sus respectivos delegados una Convención General Interamericana de Protección Marcaria y Comercial;

POR CUANTO: se considera conveniente el mantenimiento de una agencia internacional americana que facilite a los fabricantes, industriales, comerciantes o agricultores el goce de la protección marcaria y comercial que dicha Convención les otorga, y que sirva, además, de centro de información, coadyuvando al cumplimiento y mejoramiento de las disposiciones contenidas en ella;

POR CUANTO: la adopción por separado de una convención general de carácter sustantivo y de un protocolo como éste, puede facilitar la ratificación de los Estados Contratantes y la adhesión de las Repúblicas Americanas que no han tomado parte en las negociaciones, toda vez que la aceptación de la Convención no lleva implícita la de este instrumento,

Los Gobiernos arriba mencionados han convenido lo siguiente:

Artículo 1.

Las personas naturales o jurídicas domiciliadas o que posean un establecimiento fabril o comercial o una explotación agrícola en cualquiera de los Estados que hayan ratificado o se hayan adherido al presente Protocolo podrán obtener la protección de

PROTOCOL ON THE INTER-AMERICAN REGISTRATION OF TRADE MARKS.

WHEREAS, The Governments of Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua, Honduras and the United States of America have this day signed at Washington through their respective delegates a General Inter-American Convention for Trade Mark and Commercial Protection;

WHEREAS, the maintenance of an international American agency is considered desirable that manufacturers, industrialists, merchants and agriculturists may enjoy the trade mark and commercial protection which that Convention grants them, and that it may serve as a center of information, and cooperate in the fulfillment and improvement of the provisions of the Convention;

WHEREAS, the adoption of a general convention and a protocol may facilitate ratification among the Contracting States and adherence among the American Republics which have not taken part in the negotiations, since acceptance of the Convention does not imply acceptance of this instrument,

The above mentioned governments have agreed as follows:

Article 1.

Natural or juridical persons domiciled in or those who possess a manufacturing or commercial establishment or an agricultural enterprise in any of the States that may have ratified or adhered to the present Protocol, may obtain the protection of their

PROTOCOLLO SOBRE O REGISTRO INTER-AMERICANO DE MARCAS DE FABRICA

CONSIDERANDO QUE os Governos de Perú, Bolivia, Paraguay, Equador, Uruguay, Republica Dominicana, Chile, Panamá, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brasil, Mexico, Nicaragua, Honduras e dos Estados Unidos da America assignaram hoje em Washington por intermedio dos seus respectivos delegados uma Convenção inter-Americana Geral para a Protecção de Marcas de Fabrica e Protecção Commercial;

CONSIDERANDO QUE se julga conveniente a manutenção de uma agencia internacional americana afim de que os fabricantes, industriaes, negociantes e agricultores gozem da protecção de marcas de fabrica e nomes commerciaes que esta Convenção lhes outorga, e para que sirva de centro de informação, e coopere no cumprimento e melhoramento das disposições da Convenção;

CONSIDERANDO QUE a adopção de uma convenção geral e um protocollo poderão facilitar a ratificação pelos Estados Contractantes e a adhesão das Republicas Americanas que ainda não tenham tomado parte nas negociações, já que a aceitação da convenção não suppõe aceitação deste instrumento,

Os Governos acima mencionados concordaram no seguinte:

Artigo 1.

Pessoas naturaes ou juridicas domiciliadas que possuam um estabelecimento fabril ou commercial ou uma empresa agricola em qualquer dos Estados que tenham ratificado ou adherido ao presente Protocollo, poderão obter a protecção de suas marcas de

PROTOCOLE SUR L'ENREGISTREMENT INTERAMÉRICAIN DES MARQUES DE FABRIQUE

ATTENDU que les Gouvernements du Pérou, Bolivie, Paraguay, Équateur, Uruguay, République Dominicaine, Chili, Panama, Venezuela, Costa Rica, Cuba, Guatémala, Haïti, Colombie, Brésil, Mexique, Nicaragua, Honduras, et des États-Unis ont signé ce jour à Washington, par l'intermédiaire de leurs Délégués respectifs une Convention Générale Interaméricaine pour la Protection des Marques de Fabrique et du Nom Commercial;

ATTENDU que le maintien d'une agence américaine internationale est considéré comme désirable afin que les fabricants, industriels, commerçants et agriculteurs puissent jouir de la protection de leurs marques de fabrique et de commerce que cette Convention leur assure, et afin qu'elle serve de centre d'information et coopère à l'observance et à l'amélioration des dispositions de la Convention;

ATTENDU que l'adoption d'une Convention générale et d'un protocole peut faciliter la ratification par les États contractants et l'adhésion des Républiques américaines qui n'ont pas pris part aux négociations, puisque l'acceptation de la Convention n'implique pas acceptation de cet instrument,

Les Gouvernements ci-dessus nommés ont convenu de ce qui suit:

Article 1.

Les personnes naturelles ou juridiques domiciliées dans un des États ayant ratifié le présent Protocole ou y ayant adhéré, ou celles qui possèdent un établissement manufacturier ou commercial ou une entreprise agricole dans l'un de ces États peuvent

sus marcas mediante el registro de las mismas en la Oficina Interamericana de Marcas.

Artículo 2.

El titular de una marca registrada o depositada en uno de los Estados Contratantes que desee registrarla en los demás Estados Contratantes, deberá presentar una solicitud a tal efecto en la Oficina respectiva del país de registro original, cuya oficina la cursará a la Oficina Interamericana de Marcas cumpliendo las reglas dispuestas en el Reglamento, y a cuya solicitud acompañará un giro postal o de un banco de crédito reconocido, por un total de $50.00 como derechos de la Oficina Interamericana de Marcas, más el importe de los derechos que señale la ley nacional de cada uno de los países en que desea obtener protección para su marca.

Artículo 3.

Inmediatamente después de recibida la solicitud de registro de una marca y de encontrar que llena los requisitos del caso, la Oficina Interamericana de Marcas expedirá un certificado del registro en la oficina y trasmitirá por correo en sobre certificado copias de la misma acompañadas de un giro por la cantidad correspondiente a las Oficinas respectivas de los Estados en que se desee la protección. En el caso de nuevas adhesiones o ratificaciones de Estados después de registrada una marca, la Oficina Interamericana avisará a los propietarios de marcas registradas por su conducto, dichas adhesiones o ratificaciones por medio de la Oficina respectiva de su país, informándoles del derecho que tienen de registrar sus marcas en los nuevos Estados

trade marks through the registration of such marks in the Inter-American Trade Mark Bureau.

Article 2.

The owner of a mark registered or deposited in one of the Contracting States who desires to register it in any of the other Contracting States, shall file an application to this effect in the office of the country of original registration which office shall transmit it to the Inter-American Trade Mark Bureau, complying with the Regulations. A postal money order or draft on a bank of recognized standing, in the amount of $50.00, as a fee for the Inter-American Trade Mark Bureau, plus the amount of the fees required by the national law of each of the countries in which he desires to obtain protection for his mark, shall accompany such application.

Article 3.

Immediately on receipt of the application for the registration of a mark, and on determining that it fulfills all the requirements, the Inter-American Trade Mark Bureau shall issue a certificate and shall transmit by registered mail copies of the same accompanied by a money order for the amount required by the respective Offices of the States in which protection is desired. In the case of adhesions or ratifications of additional states after the registration of a mark, the Inter-American Bureau shall, through the respective offices of their countries, inform the proprietors of marks registered through the Bureau, of said adhesions or ratifications, informing them of the right that they have to register their marks in the new adhering or ratifying States.

fabrica mediante o registro das mesmas na Secretaria Inter-Americana de Marcas de Fabrica.

Artigo 2.

O proprietario de uma marca registrada ou depositada em um dos Estados Contractantes que desejar registral-a nos outros Estados Contractantes, fará um pedido nesse sentido á respectiva repartição do paiz de rigistro original cuja repartição a transmittirá á Secretaria Inter-Americana de Marcas de Fabrica, cumprindo com o Regulamento. Esse pedido será acompanhado de um vale postal ou letra sobre um banco de reconhecida reputação, no valor de $50.00, como emolumento da Secretaria Inter-Americana de Marcas de Fabrica, mais a importancia das taxas exigidas pela lei nacional de cada um dos paizes em que elle desejar obter protecção para a sua marca.

Artigo 3.

Immediatamente depois de receber um pedido de registro de uma marca, e de determinar que tal pedido satisfaz todas as exigencias, a Secretaria Inter-Americana de Marcas de Fabrica expedirá um certificado e transmittirá por correio registrado copias da mesma accompanhadas de um vale postal para a quantia exigida pelas respectivas Repartições dos Estados em que se deseja protecção. No caso de adhesões ou ratificações de Estados addicionaes após registro da marca, a Secretaria Inter-Americana, por intermedio da respectiva repartição do seu paiz, informará os proprietarios das marcas registradas na Secretaria, das ditas adhesões ou ratificações, notificando-os do direito que lhes assiste de registrar as suas marcas

obtenir l'enregistrement de leurs marques de fabrique moyennant l'enregistrement de ces marques au Bureau Interaméricain des Marques de Fabrique.

Article 2.

Le propriètaire d'une marque enregistrée et deposée dans l'un des États contractants qui désire la faire enregistrer dans tout autre des États contractants adressera une demande à cet effet au bureau intéressé du pays de l'enregistrement original, lequel la transmettra au Bureau Interaméricain des Marques de Fabrique, conformément aux Règlements. Un mandat poste ou un chèque sur une banque de crédit connue pour la somme de $50.00 à titre de taxe en faveur du Bureau Interaméricain des Marques de Fabrique, plus le montant des droits requis par la législation nationale de chacun des pays dans lesquels il désire obtenir protection pour sa marque, sera joint à cette demande.

Article 3.

Aussitôt reçue la demande d'enregistrement d'une marque et aussitôt après constatation qu'elle remplit les conditions requises, le Bureau Interaméricain des Marques de Fabrique émettra un certificat interaméricain d'enregistrement et transmettra par pli recommandé des copies de celle-ci accompagnées d'une traite pour le montant requis par les Bureaux respectifs des États dans lesquels la protection est désirée. En cas d'adhésions ou ratifications d'États nouveaux postérieurement à l'enregistrement d'une marque, le Bureau Interaméricain par la voie des services respectifs de leur pays avisera les propriétaires de marques enregistrées par ce Bureau des dites adhésions ou ratifications; les informant de leur droit de faire

adherentes o ratificantes, cuyo registro se efectuará en la forma antes expresada.

in which registration shall be effected in the manner above mentioned.

Artículo 4.

Cada uno de los Estados Contratantes por conducto de su Oficina de Marcas, acusará inmediatamente el recibo de la solicitud de registro de cada Marca a la Oficina Interamericana, y procederá a tramitar el expediente con toda la prontitud posible publicándola por cuenta del solicitante en los periódicos oficiales de costumbre, y oportunamente notificará a la Oficina Interamericana la resolución que haya dictado de acuerdo con su legislación interna y las estipulaciones de esta Convención.

En el caso de que sea otorgada la protección a la marca solicitada, expedirá un certificado de registro haciendo constar la vida legal del registro, el cual certificado será otorgado con las mismas formalidades que los nacionales y surtirá los mismos efectos en cuanto a la propiedad de la marca. Este certificado de registro se enviará a la Oficina Interamericana de Marcas, quien lo remitirá al propietario por conducto de la Oficina respectiva del país de origen.

Si dentro de un plazo de siete meses de haber sido recibida por un Estado Contratante la solicitud de protección de una marca remitida por la Oficina Interamericana de Marcas, la administración de ese Estado no ha comunicado a dicha Oficina la denegación de protección fundada en los preceptos de su legislación interna o de la Convención General Interamericana

Article 4.

Each of the Contracting States, through its Trade Mark Office, shall immediately acknowledge to the Inter-American Bureau, the receipt of the application for registration of each mark, and shall proceed to carry through the proceedings with every possible dispatch, directing that the application be published at the expense of the applicant in the usual official papers, and at the proper time shall notify the Inter-American Bureau of the action that it may have taken in accordance with its internal legislation and the provisions of this Convention.

In case protection is granted to the mark, it shall issue a certificate of registration in which shall be indicated the legal period of registration; which certificate shall be issued with the same formalities as national certificates and shall have the same effect in so far as ownership of the mark is concerned. This certificate of registration shall be sent to the Inter-American Trade Mark Bureau, which shall transmit it to the proprietor of the mark through the proper office of the country of origin.

If, within seven months after the receipt by a Contracting State of an application for the protection of a trade mark transmitted by the Inter-American Trade Mark Bureau, the administration of such State does not communicate to the Bureau notice of refusal of protection based on the provisions of its domestic legislation or on the provisions of the General Inter-American

nos novos Estados adherentes ou ratificantes, nos quaes o registro deverá ser effectuado da maneira acima referida.

enregistrer leurs marques dans les nouveaux États adhérents ou ayant ratifié le présent Protocole, dans lesquels l'enregistrement sera effectué de la manière plus haut mentionnée.

Artigo 4.

Cada um dos Estados Contractantes, por intermedio de sua Repartição de Marcas de Fabrica, notificará immediatamente á Secretaria de Marcas de Fabrica do recebimento de cada pedido de registro e procederá a ultimar os devidos processos com a maior brevidade possivel, fazendo publicar o pedido ás expensas do requerente nas usuaes publicações officiaes, e em tempo opportuno notificará a Secretaria Inter-Americana da decisão a que tiver chegado de accordo com a sua legislação interna e as disposições desta Convenção.

Article 4.

Chacun des États contractants, par la voie de son Bureau des Marques de Fabrique, accusera immédiatement réception au Bureau Interaméricain de la demande d'enregistrement de chaque marque et procédera à l'expédition des formalités le plus rapidement possible; fera insérer la demande dans les publications officielles usuelles et avisera en temps utile le Bureau interaméricain de la décision prise conformément à la législation nationale et aux dispositions de cette Convention.

No caso de ser outorgada protecção á marca, expedirá um certificado de registro no qual será indicado o periodo legal de registro inter-americano; o qual certificado será expedido com as mesmas formalidades que os certificados nacionaes e terá o mesmo effeito no que diz respeito á posse da marca. Este certificado de registro será enviado á Secretaria Inter-Americana de Marcas de Fabrica, que o remetterá ao proprietario da marca por intermedio da competente repartição do paiz de origem.

Se, dentro de sete mezes após recebimento por um Estado Contractante de um pedido de protecção para uma marca de fabrica transmittido pela Secretaria Inter-Americana de Marcas de Fabrica, a administração do referido Estado não communicar á dita Secretaria a notificação da recusa da protecção baseada nas disposições de sua legislação interna ou nas disposições da Convenção Geral

Au cas où la protection est accordée à la marque l'État émettra un certificat d'enregistrement dans lequel sera indiqué la durée légale d'enregistrement. Ce certificat sera émit dans les mêmes formes que les certificats nationaux et en aura le même effet en ce qui concerne la propriété de la marque. Ce certificat d'enregistrement sera adressé au Bureau Interaméricain des Marques de Fabriques qui le transmettra au propriétaire de la marque par la voie du Bureau appropriée du pays d'origine.

Si sept mois après la réception par un État contractant d'une demande pour la protection de marque de fabrique transmise par le Bureau Interaméricain des Marques de Fabrique l'Administration du dit État n'a pas fait parvenir à ce Bureau un avis de refus de protection basé sur les prescriptions de sa législation nationale ou sur les dispositions de la Convention Générale Inter-

de Protección Marcaria y Comercial, se considerará registrada dicha marca, y la Oficina Interamericana lo hará saber así al solicitante por conducto del país de origen expidiendo un certificado especial que tendrá la misma fuerza y valor legal de un certificado nacional.

En el caso de que la protección de una marca sea denegada de acuerdo con los preceptos de la legislación de cada Estado o de la Convención General Interamericana de Protección Marcaria y Comercial, el solicitante podrá hacer uso de los mismos recursos que las leyes respectivas conceden a los ciudadanos del Estado que dictó la negativa de protección, y los términos que para el ejercicio de dichos recursos y acciones concedan las leyes nacionales empezarán a contarse después de los cuatro meses de haberse recibido el aviso de negativa en la Oficina Interamericana de Marcas.

El registro interamericano de una marca comunicado a los Estados Contratantes, que sea protegida en éstos, substituirá cualquier otro registro de la misma marca que haya sido hecho anteriormente por cualquier otro medio, sin perjuicio de los derechos adquiridos por el registro nacional.

Artículo 5.

Igual procedimiento al estipulado en los artículos anteriores se seguirá para el registro de la trasmisión de la propiedad de una marca o de la cesión del uso de la misma, pero en ese caso sólo se remitirá a la Oficina Interamericana la cantidad de $10.00 que retendrá la Oficina, más el importe que fije la legislación interna de cada país en que se desee registrar la trasmisión o cesión, en-

Convention for Trade Mark and Commercial Protection such mark shall be considered as registered and the Inter-American Trade Mark Bureau shall so communicate to the applicant through the country of origin, and shall issue a special certificate which shall have the same force and legal value as a national certificate.

In case protection of a mark is refused in accordance with the provisions of the internal legislation of a State or of the General Inter-American Convention for Trade Mark and Commercial Protection, the applicant may have the same recourse which the respective laws grant to the citizens of the state refusing protection. The period within which the recourse and actions granted by national laws may be exercised shall begin four months after receipt by the Inter-American Trade Mark Bureau of the notice of refusal.

The Inter-American registration of a trade mark communicated to the Contracting States, which may already enjoy protection in such States shall replace any other registration of the same mark effected previously by any other means, without prejudice to the rights already acquired by national registration.

Article 5.

In order to effect the transfer of ownership of a trade mark or the assignment of the use of the same, the same procedure as that set forth in the foregoing articles shall be followed, except that in this case there shall only be remitted to the Inter-American Bureau $10.00, to be retained by said Bureau, plus the fees fixed by the domestic legislation of each one of the countries in which it is

Inter-Americana para a Protecção de Marcas de Fabrica e Protecção Commercial, a referida marca será considerada como registrada e a Secretaria Inter-Americana informará nesse sentido ao requerente por intermedio do paiz de origem, e expedirá um certificado especial que terá a mesma força e valor legal que um certificado nacional.

No caso de ser negada protecção a uma marca de accordo com as disposições da legislação interna de um Estado ou da Convenção Geral Inter-Americana para a Protecção de Marcas de Fabrica e Protecção Commercial, o requerente poderá se valer dos mesmos recursos que as respectivas leis outorgam aos cidadãos do Estado que tiver recusado protecção. O periodo dentro do qual poderão ser exercidos os recursos e as acções outorgados pelas leis nacionaes começará quatro mezes após recebimento pela Secretaria Inter-Americana de Marcas de Fabrica da notificação da recusa.

O registro inter-americano de uma marca de fabrica communicada aos Estados Contractantes, que estiver já no goso de protecção nos referidos Estados, tomará o logar de qualquer outro registro da mesma marca previamente effectuado por qualquer outro meio, sem prejuizo dos direitos até então adquiridos por registro nacional.

Artigo 5.

Com o fim de se effectuar a transferencia da posse de uma marca de Fabrica ou a designação do uso da mesma seguir-se-ão os mesmos processos que os constantes do artigo anterior, excepto que neste caso será remettida á Secretaria Inter-Americana apenas a quantia de dez dollars, para ser retida pela dita Secretaria, mais os emolumentos estabelcidos pela legislação domestica de cada um

américaine pour la Protection des Marques de Fabrique et du Nom Commercial, la dite marque sera considérée comme enregistrée et le Bureau. Interaméricain en informera le requérant par l'intermédiaire du Bureau du pays d'origine, et émettra un certificat spécial qui aura la même force et valeur légale qu'un certificat national.

Dans le cas où la protection d'une marque est refusée conformément aux dispositions de la législation nationale de l'État ou de la Convention Générale Interaméricaine pour la Protection des Marques de Fabrique et Commerciale le requérant peut user des recours que les lois respectives accordent aux citoyens de l'État qui refuse la protection. Le délai pendant lequel les recours et actions accordés par les lois nationales peuvent être exercés commencera quatre mois après la réception de l'avis de refus par le Bureau Interaméricain des Marques de Fabrique.

L'enregistrement interaméricain d'une marque de fabrique transmise aux États contractants qui y est déjà protégée remplacera tout autre enregistrement de la même marque effectué antérieurement par tout autre moyen sans préjudice des droits déjà acquis par l'enregistrement national.

Article 5.

Pour effectuer le transfert de propriété d'une marque de fabrique, ou le transfert de son usage, la même procédure que celle prescrite dans les articles précédents, sera suivie, sauf toutefois que dans ce cas il ne sera remis au Bureau interaméricain que dix dollars revenant au dit Bureau,— plus les droits fixés par la législation nationale de chacun des pays dans lesquels l'enregistrement de

teniéndose que el uso de las marcas puede ser transferido separamente en cada país.

Artículo 6.

Si el solicitante reivindica el color como elemento constitutivo de su marca, se le exigirá:

1. Que lo declare acompañando al registro una nota que indique el color o la combinación de colores que reivindica, y

2. Que una a su solicitud copias o ejemplares, de dicha marca, en colores, tal como se encuentra en uso, los cuales se anexarán a las notificaciones hechas por la Oficina Interamericana. El número de dichos ejemplares se fijará por el Reglamento.

Artículo 7.

Las marcas registradas se publicarán en una hoja periódica editada por la Oficina Interamericana, dando las indicaciones contenidas en la solicitud de registro y un diseño suministrado por el registrante.

Para la publicidad que ha de darse en los Estados Contratantes a las marcas inscriptas, cada administración recibirá gratuitamente de la Oficina Interamericana el número de ejemplares de la precitada publicación que quiera pedir.

La publicación de una marca en la hoja periódica de la Oficina Interamericana tendrá la misma fuerza que su publicación en los periódicos o boletines oficiales de los Estados Contratantes.

desired to register the transfer or assignment of the mark, it being understood that the use of trade marks may be transferred separately in each country.

Article 6.

If the applicant claims color as a distinctive element of his mark he shall be required to:

1. Send a statement attached to the application for registration declaring the color or the combination of colors which he claims; and

2. Attach to the application for registration copies or specimens of the mark as actually used, showing the colors claimed, which shall be attached to the notifications sent by the Inter-American Bureau. The number of copies to be sent shall be fixed by the Regulations.

Article 7.

Trade marks shall be published in a bulletin edited by the Inter-American Bureau, wherein shall appear the matter contained in the application for registration and an electrotype of the mark supplied by the applicant.

Each administration of the Contracting States shall receive free of charge from the Inter-American Bureau as many copies of the above mentioned publication as it may ask for.

The publication of a mark in the bulletin of the Inter-American Bureau shall have the same effect as publication in the official journals or bulletins of the Contracting States.

dos paizes em que se pretender registrar a transferencia ou a designação do uso da marca, ficando entendido que o uso das marcas de fabrica poderá ser transferido separadamente em cada paiz.

Artigo 6.

Se o registrante requerer a côr como elemento distinctivo de sua marca deverá:

1. Enviar uma declaração appensa ao pedido de registro declarando a côr ou a combinação de côres que requer;

2. Juntar ao pedido de registro exemplares ou especimens da marca conforme se acha effectivamente em uso, mostrando as côres requeridas, os quaes serão appensos ás notificações enviadas pela Secretaria Inter-Americana. O numero de exemplares a serem enviados será determinado pelo Regulamento.

Artigo 7.

As marcas serão publicadas em um boletim editado pela Secretaria Inter-Americana, no qual apparacerá a materia contida no pedido de registro e um electrotypo da marca fornecido pelo requerente.

Cada Administração dos Estados Contractantes receberá, livre de despesa, da Secretaria Inter-Americana tantos exemplares das supracitadas publicações quantas ella solicitar.

A publicação de uma marca no boletim da Secretaria Inter-Americana terá o mesmo effeito que a sua publicação nos jornaes ou boletins officiaes dos Estados Contractantes.

ce transfert est désiré, étant entendu que l'usage de marques de fabrique peut être transféré séparément dans chaque pays.

Article 6.

Si le requérant revendique une couleur comme élément distinctif de sa marque, il sera tenu:

1. D'envoyer une déclaration annexée à sa demande d'enregistrement indiquant la couleur ou la combination de couleurs qu'il revendique;

2. De joindre à sa demande d'enregistrement des copies ou spécimens de la marque actuellement employée, montrant les couleurs revendiquées, lesquels seront annexés aux notifications transmises par le Bureau Interaméricain. Le nombre d'exemplaires à fournir sera fixé par les Règlements.

Article 7.

Les marques de fabrique enregistrées seront insérées dans un Bulletin publié par le Bureau Interaméricain, dans lequel figureront les indications contenues dans la demande d'enregistrement, ainsi qu'une reproduction électrotype de la marque soumise par le requérant.

Chaque administration des États contractants recevra gratuitement du Bureau Interaméricain autant d'exemplaires de la publication sus-mentionnée qu'il en sera demandé.

La publication d'une marque dans le bulletin du Bureau Interaméricain aura le même effet que sa publication dans les journaux officiels des États contractants.

Artículo 8.

La Oficina Interamericana expedirá a cualquier persona que la pida, mediante un derecho que fijará el Reglamento, copia de las anotaciones hechas en el registro con referencia a una marca determinada.

Artículo 9.

La Oficina registrará también las renovaciones una vez cumplidos los requisitos de la legislación interna de cada Estado Contratante, previo pago de un derecho de $10.00 para la Oficina y los derechos que corresponden a los Estados en que dichas renovaciones se efectúen.

Seis meses antes de la expiración del término de protección, la Oficina Interamericana pasará aviso oficioso a la Administración del país de origen y al propietario de la marca.

Artículo 10.

El propietario de una marca podrá siempre renunciar a la protección en uno o varios de los Estados Contratantes, mediante una declaración enviada a la administración del país de origen de la marca, para ser comunicada a la Oficina Interamericana, la cual notificará a los países a que concierna dicha renuncia.

Artículo 11.

Los que soliciten el registro, depósito, trasmisión, cesión o renovación de una marca por medio de la Oficina Interamericana, podrán nombrar en cualquier tiempo, por medio del correspondiente poder, un agente o apoderado a fin de que los represente en cualquier procedimiento ad-

Article 8.

The Inter-American Bureau, on receipt of payment of a fee to be fixed by the Regulations, shall furnish to any person who may so request, copies of the entries made in the register with reference to any particular mark.

Article 9.

The Inter-American Trade Mark Bureau shall keep a record of renewals which have been effected in compliance with the requiremnts of the domestic laws of the Contracting States, and after payment of a fee of $10.00 to the Inter-American Trade Mark Bureau and the customary fees required by the States where said renewal is effected.

Six months prior to the expiration of the period of protection, the Inter-American Bureau shall communicate this information to the administration of the country of origin and to the owner of the mark.

Article 10.

The owner of a trade mark may at any time relinquish protection in one or several of the Contracting States, by means of a notice sent to the administration of the country of origin of the mark, to be communicated to the Inter-American Bureau, which in turn shall notify the countries concerned.

Article 11.

An applicant for registration or deposit, transfer or renewal of a trade mark through the Inter-American Bureau, may appoint by a proper power of attorney at any time, an agent or attorney to represent him in any procedure, administrative, judicial or otherwise, arising in connection

Artigo 8.

A Secretaria Inter-Americana, ao receber o pagamento da taxa a ser fixada pelo Regulamento, fornecerá a qualquer pessoa que as solicitar copias dos assentamentos feitos no registro relativamente a qualquer marca determinada.

Artigo 9.

A Secretaria Inter-Americana de Marcas de Fabrica manterá um registro das renovações que tenham sido effectuadas na conformidade das exigencias das leis internas do Estado Contractante e após pagamento de uma taxa de $10.00 á Secretaria Inter-Americana de Marcas de Fabrica e as taxas exigidas pelos Estados em que se effectuar a referida renovação.

Seis mezes antes da expiração do prazo de protecção a Secretaria Inter-Americana communicará essa informação á administração do paiz de origem e ao proprietario da marca.

Artigo 10.

O proprietario de uma marca inter-americana poderá em qualquer tempo renunciar á protecção em um ou varios dos Estados Contractantes, mediante aviso enviado á Administração do paiz de origem da marca para ser communicado á Secretaria Inter-Americana, que por sua vez notificará os paizes interessados.

Artigo 11.

A pessoa que requerer registro ou deposito, transferencia ou renovação de uma marca por intermedio da Secretaria Inter-Americana, poderá nomear em qualquer tempo, mediante procuração, um agente ou procurador para represental-a em qualquer procedimento, administrativo, judicial

Article 8.

Le Bureau interaméricain expédiera à tout personne qui en fera la demande, moyennant paiement d'un droit à fixer par les Règlements, copies ou contenu du registre se référant à une marque déterminée.

Article 9.

Le Bureau Interaméricain des Marques de Fabrique tiendra registre des renouvellements qui ont été effectués conformément aux prescriptions de la loi nationale des États contractants moyennant paiement d'un droit de $10.00 au Bureau Interaméricain des Marques de Fabrique et des droits ordinaires requis par les États dans lesquels la renouvellement est effectué.

Six mois avant l'expiration de la période de protection, le Bureau interaméricain en donnera avis à l'Administration du pays d'origine et au propriétaire de la marque.

Article 10.

Le propriétaire d'une marque de fabrique peut, à tout moment, renoncer à la protection dans l'un ou plusieurs des États contractants au moyen d'un avis adressé à l'Administration du pays d'origine de la marque pour être communiqué au Bureau interaméricain, lequel à son tour, en informera les pays que concerne la dite renonciation.

Article 11.

Tout requérant de l'enregistrement ou dépôt, transfert ou renouvellement d'une marque de fabrique par l'intermédiaire du Bureau Interaméricain, peut désigner par un pouvoir régulier à n'importe quel moment, un agent ou avocat pour le représenter dans toute action administrative,

ministrativo, judicial o de cualquiera otra clase que surja con motivo de dichas marcas o solicitud en cualquiera de los Estados Contratantes.

Dichos apoderados tendrán derecho a notificarse de todas las actuaciones y a recibir y presentar los documentos que fueren necesarios en la Oficina de Marcas de cada país, de acuerdo con las estipulaciones de este Protocolo.

with such trade marks or application in any Contracting State.

Such agents or attorneys shall be entitled to notice of all the proceedings and to receive and present all documents that may be required by the Trade Mark Bureau of each country under the provisions of this Protocol.

Artículo 12.

La Administración del país de origen notificará a la Oficina Interamericana las anulaciones, cancelaciones, renuncias, traspasos y demás cambios que se produjeren en la propiedad o uso de la marca.

La Oficina Interamericana inscribirá dichos cambios, los notificará a las administraciones de los Estados Contratantes, y los publicará en seguida en su periódico.

Se procederá igualmente cuando el proprietario de la marca solicite reducir la lista de los productos a que se aplica.

La adición ulterior de un nuevo producto a la lista, no puede obtenerse sino por un nuevo registro efectuado conforme a las disposiciones del artículo 2 de este Protocolo. A la adición se asimila la substitición de un producto en lugar de otro.

Article 12.

The administration in the country of origin shall notify the Inter-American Bureau of all annulments, cancellations, renunciations, transfers and all other changes in the ownership or use of the mark.

The Inter-American Bureau shall record these changes, notify the administrations of the Contracting States and publish them immediately in its bulletin.

The same procedure shall be followed when the proprietor of the mark requests a reduction in the list of products to which the trade mark is applied.

The subsequent addition of a new product to the list may not be obtained except by a new registration of the mark according to the provisions of Article 2 of this Protocol. The same procedure shall be followed in the case of the substitution of one product for another.

Artículo 13.

Los Estados Contratantes se obligan a enviar por conducto de sus oficinas nacionales de marcas, tan pronto como se publiquen, dos ejemplares de las gacetas o publicaciones oficiales en que aparezcan sentencias o resoluciones judiciales o administrativas, leyes, decretos, reglamentos,

Article 13.

The Contracting States bind themselves to send through their respective national trade mark offices, as soon as they are published, two copies of the official bulletins or publications in which judicial or administrative decisions or resolutions, laws, decrees, regulations, circulars, or

ou outro, oriunda de taes marcas ou pedido em qualquer dos Estados Contractantes.

Os referidos procuradores terão o direito de ser notificados de todos os procedimentos e a receber e produzir todos os documentos que possam ser recebidos pela Secretaria de Marcas de Fabrica de cada um dos paizes de accordo com as disposições deste Protocollo.

Artigo 12.

A administração do paiz de origem notificará á Secretaria Inter-Americana das revogações, cancellamentos, renuncias, transferencias e todas as outras mudanças na posse e uso da marca.

A Secretaria Inter-Americana annotará estas mudanças, notificará as Administrações do Estado Contractante e fará immediatamente a competente publicação no seu boletim.

Seguir-se-á o mesmo processo quando o proprietario da marca pedir uma reducção na lista de productos aos quaes se applica a marca.

A addição subsequente de um novo producto á lista não poderá ser outorgada excepto por novo registro da marca de accordo com o disposto no Artigo 2 deste Protocollo. Será seguido o mesmo processo no caso da substituição de um producto por outro.

Artigo 13.

Os Estados Contractantes concordam em enviar, por intermedio das suas respectivas repartições nacionaes, logo que forem publicados, dois exemplares dos boletins ou publicações officiaes em que apparecerem decisões ou resoluções judiciaes ou administrativas, leis, decretos, regulamentos, circulares

judiciaire ou autre née à l'occasion de telles marques de fabrique ou demande d'enregistrement dans un des États contractants.

Ces agents ou avocats auront le droit de prendre connaissance de tous actes ou procès-verbaux et de recevoir et de produire tous documents qui peuvent être requis par le Bureau des marques de fabrique de chaque pays conformément aux dispositions de ce protocole.

Article 12.

L'Administration du pays d'origine avisera le Bureau interaméricain des annulations, cancellations, transferts et de tous autres changements dans la propriété ou l'usage de la marque.

Le Bureau interaméricain tiendra registre de ces changements, en avisera les Administrations des États contractants et les insérera immédiatement dans son bulletin.

La même procédure sera suivie lorsque le propriétaire de la marque demande une réduction dans la liste des produits auxquels la marque de fabrique s'applique.

L'addition subséquente d'un nouveau produit à la liste ne peut être obtenue qu'au moyen d'un nouvel enregistrement de la marque suivant les dispositions de l'Article 2 de ce Protocole. La même procédure sera suivie au cas de substitution d'un produit à un autre.

Article 13.

Les États contractants s'engagent à envoyer par l'intermédiaire de leurs bureaux respectifs des marques de fabrique, aussitôt qu'ils sont publiés, deux exemplaires des bulletins officiels ou publications dans lesquels sont insérés les décisions ou résolutions juridiques ou administratives, les

circulares o cualesquiera otras disposiciones emanadas de los poderes ejecutivo, legislativo o judicial que se refieran a la protección marcaria, la defensa de los nombres comerciales, o la represión de la competencia desleal y de las falsas indicaciones de procedencia, tanto en el orden administrativo, como en el civil o penal.

any other provisions emanating from the executive, legislative or judicial authorities may appear and which refer to the protection of trade marks, the protection of commercial names, the repression of unfair competition and of false indications of origin, whether of an administrative, civil or penal nature.

Artículo 14.

A fin de cumplir este Protocolo y facilitar el registro interamericano de marcas, los Estados Contratantes establecen por su agencia internacional, la oficina situada en la Habana, República de Cuba, que se denominará en lo sucesivo "Oficina Interamericana de Marcas," y confieren a su correspondencia oficial la franquicia postal.

Article 14.

In order to comply with this Protocol, and to facilitate the inter-American registration of trade marks, the Contracting States establish as their international agency the Bureau located in Habana, Republic of Cuba, referred to as the "Inter-American Trade Mark Bureau," and confer upon its official correspondence the postal frank.

Artículo 15.

La Oficina Interamericana de Marcas desempeñará las funciones expresadas en este Protocolo y en el Reglamento anexo, y se sostendrá con los derechos que perciba por la tramitación de las marcas, más las cuotas asignadas a los Estados Contratantes. Dichas cuotas se pagarán directamente a la Oficina por anualidades adelantadas, y se calcularán de la manera siguiente:

Article 15.

The Inter-American Trade Mark Bureau shall perform the duties specified in this Protocol and in the Regulations appended hereto, and shall be supported in part by the fees received for handling trade marks and in part by the quotas assigned to the Contracting States. These quotas shall be paid directly and in advance to the Bureau in yearly installments and shall be determined in the following manner:

Se determinará la población de cada Estado Contratante que ratifique este Protocolo, por medio de los respectivos censos oficiales más recientes, dividiendo el número de habitantes en unidades que representen 100,000, considerando las fracciones mayores de 50,000 como una unidad y no tomando en cuenta las menores. El monto de dicha contribución

The population of each Contracting State ratifying this Protocol shall be determined by its latest official census, the number of inhabitants to be divided into units of 100,000 each, fractions above 50,000 to be considered as a full unit, and those under to be disregarded. The annual budget shall be divided by the total number of units, thereby determining

ou quaesquer outras disposições emanadas das autoridades executivas, legislativas, ou judiciaes referentes á protecção das marcas de fabrica, protecção de nomes commerciaes e repressão da concurrencia desleal e de falsas indicações de origem, quer de natureza administrativa, civil ou penal.

Artigo 14.

Com o fim de conformar com este Protocollo, e facilitar o registro das marcas de fabrica inter-americanas, os Estados Contractantes estabelecem como sua agencia internacional a Secretaria existente em Havana, Republica de Cuba, a qual será conhecida como "Secretaria Inter-Americana de Marcas de Fabrica," e conferem á sua correspondencia official a franquia postal.

Artigo 15.

A Secretaria Inter-Americana de Marcas de Fabrica desempenhará os deveres especificados neste Protocollo e no regulamento annexo e será mantida em parte pelos emolumentos recebidos pelo serviço de encaminhar as marcas, em parte pelas quotas dos Estados Contractantes. Estas quotas serão pagas directamente e adeantadamente á Secretaria, em installações annuaes e serão determinadas da seguinte maneira:

A população de cada Estado Contractante que ratificar este protocollo será determinada por seu ultimo recenseamento official, devendo o numero de habitantes ser dividido em unidades de 100,000 cada uma, sendo tomadas como unidades as fracções acima de 50,000 e desprezadas as inferiores a este numero. O orçamento annual será dividido pelo numero

lois, décrets et règlements, les circulaires ou toutes autres dispositions émanant des autorités législatives ou judiciaires et qui se réfèrent à la protection des marques de fabrique, à la protection du nom commercial, à la répression de la concurrence déloyale et des fausses indications d'origine, que ce soit de nature administrative, civile ou pénale.

Article 14.

À l'effet de se conformer au présent Protocole et de faciliter l'enregistrement interaméricain des marques de fabrique, les États contractants établissent comme agence internationale le Bureau situé à La Havane, République de Cuba, auquel il est référé sous le nom de "Bureau Interaméricain des Marques de Fabriques," et confèrent à sa correspondance officielle la franchise postale.

Article 15.

Le Bureau Interaméricain des Marques de Fabrique exercera les fonctions spécifiées dans ce Protocole et dans les règlements qui y sont annexés, et ses frais seront supportés en partie au moyen des droits perçus pour les soins accordés aux des marques de fabrique, et partie par des quote-parts assumées par les États contractants. Ces quote-parts seront payées directement et à l'avance au Bureau par versements annuels, et elles seront calculées de la manière suivante:

La population de chaque État contractant ayant ratifié le présent protocole sera déterminée par son recensement officiel le plus récent. Le chiffre des habitants sera divisé en unités de 100,000, les fractions au dessus de 50,000 étant considerées comme unité entière, et celles au dessous n'étant pas comptées. Le budget annuel sera divisé par le chiffre d'unités,

anual se dividirá entre el número total de unidades así obtenido, lo que determinará el importe de la cuota por unidad, y multiplicando ésta por el número de unidades asignado a cada Estado, se fijará su contribución para la Oficina Interamericana.

Al recibirse nuevas ratificaciones o adhesiones al presente Protocolo, se procederá con los nuevos Estados en la misma forma, determinando en cada caso su contribución, previa adición de las nuevas unidades y determinación de la cuota por unidad que así resulte.

Queda expresamente convenido que esta contribución anual se efectuará mientras los demás ingresos de la Oficina no sean suficientes para su sostenimiento; mientras esto ocurra, cada año se revisarán los censos de población haciendo los cambios que resulten necesarios de acuerdo con los datos oficiales suministrados por cada Estado Contratante y calculando nuevamente las cuotas, antes de fijar las contribuciones de dichos Estados. Una vez que la Oficina pueda sostenerse con sus propios ingresos, se distribuirá el remanente de las contribuciones entre los Estados en proporción a las cantidades de ellos percibidas.

A la terminación de cada año, la Oficina Interamericana hará una liquidación de los derechos y cuotas percibidas, y después de cubierto su presupuesto para el año venidero, y de mantener una reserva adecuada, devolverá el sobrante a los Estados Contratantes en proporción a las cuotas pagadas por éstos.

El presupuesto de dicha Oficina y la reserva que debe mantener, serán aprobados por el Ejecutivo

the quota per unit. The contribution of each State to the Inter-American Bureau shall be determined by multiplying the quota per unit by the number of units allotted to each State.

Upon receipt of new ratifications and adhesions to this Protocol, the same procedure shall be followed with respect to such States, the quota of each to be determined by adding these additional units and thus determining the quota per unit.

It is expressly agreed that this annual contribution will continue to be paid only so long as the other revenues of the Bureau are not sufficient to cover the expenses of its maintenance. So long as this situation exists, the latest census of population will be used each year and, on the basis of official data furnished by each Contracting State, the changes in population shall be made and the quotas determined anew before fixing the contributions to be paid by those States. Once the Bureau becomes self-supporting through its own receipts, the balance remaining from the quotas shall be returned to the States in proportion to the amounts received from them.

At the end of each year the Inter-American Bureau shall prepare a statement of fees and contributions received and after making provision for its budgetary requirements for the following year and setting aside a reserve fund, shall return the balance to the Contracting States in proportion to the quotas paid by them.

The budget of the Bureau and the reserve fund to be maintained shall be submitted by the Di-

total de unidades, assim determinando a quota por unidade. A contribuição de cada Estado á Secretaria Internacional será determinada multipliando-se a quota por unidade pelo numero de unidades assignado a cada Estado.

No caso de novas ratificações e adhesões a este Protocollo, seguir-se-á o mesmo processo no referente a taes Estados, devendo a quota de cada um ser determinada sommando-se essas unidades adicionaes e assim determinando a quota por unidade.

Fica expressamente entendido que esta contribuição annual continuará a ser paga somente emquanto as outras receitas da Secretaria não forem sufficientes para cobrir as despesas de sua manutenção. Emquanto existir esta situação será usado cada anno o ultimo recenseamento da população, e nesta base official serão fornecidos dados pelos Estados Contractantes, devendo ser feitas as differenças na população e determinadas novamente as quotas antes de serem fixadas as contribuições a serem pagas por esses Estados. Uma vez que a Secretaria esteja nas condições de se manter mediante a sua propria receita, o saldo restante das quotas será devolvido a cada Estado na proporção das quantias dellas recebidas.

No fim de cada anno a Secretaria Inter-Americana preparará uma exposição dos emolumentos e das contribuições recebidas e depois de providenciar para as exigencias orçamentarias do anno seguinte e separar um fundo de reserva, devolverá o saldo aos Estados Contractantes na proporção das quotas pagas pelos mesmos.

O orçamento da Secretaria e o fundo de reserva a ser mantido serão submettidos pelo Director

déterminant ainsi le chiffre par unité. La contribution de chaque état au Bureau interaméricain sera obtenue en multipliant la quote-part par le nombre d'unités attribuées à chaque état.

Au reçu de nouvelles ratifications et adhésions à ce Protocole, la même procédure sera suivie à l'égard de ces états, la quote-part de chacun étant déterminée par l'addition des unité nouvelles en vue d'établir la quote-part par unité.

Il est expressément convenu que cette contribution annuelle continuera seulement à être payée tant que les autres revenus du Bureau ne seront pas suffisants pour couvrir les dépenses de son maintien. Tant que cette situation existera, le recensement le plus récent de la population sera utilisé chaque année et, sur la base des documents officiels fournis par chaque état contractant, les changements de la population seront notés et les quote-parts déterminées à nouveau avant de fixer les contributions à payer par ces états. Une fois que le Bureau pourra se suffire au moyen de ses propres recettes, la balance en solde des quotes-parts sera remboursée aux États en proportion des valeurs reçues de chacun d'eux.

À la fin de chaque année, le Bureau Interaméricain dressera un état des droits et contributions perçus, et après avoir pourvu aux exigences de son budget pour l'année suivante et constitué un fonds de réserve, il remboursera le solde aux États contractants en proportion des quote-parts payées par eux.

Le budget du Bureau et le fonds de réserve à maintenir seront soumis par le Directeur du

del Estado en que la misma radique, a propuesta del Director de la misma, quien dará cuenta anualmente a todos los Estados ratificantes para su conocimiento.

rector of the Bureau and approved by the Chief Executive of the State in which the Bureau is established. The Director of the Bureau shall also submit an annual report to all ratifying States, for their information.

Artículo 16.

En caso de que la Oficina cese de funcionar con carácter definitivo se procederá a su liquidación bajo la supervisión del Gobierno de Cuba, distribuyéndose el saldo que resulte entre los Estados Contratantes en la misma proporción en que contribuyeron a su sostenimiento. Los edificios y otras propiedades materiales de la Oficina pasarán a ser propiedad del Gobierno de Cuba en reconocimiento de los servicios prestados por esa República para llevar a la práctica este Protocolo; pero dicho Gobierno se compromete a dedicar esas propiedades a objetos de carácter esencialmente interamericano.

Los Estados Contratantes convienen en aceptar como definitiva toda disposición que se tome para la liquidación de la Oficina.

Article 16.

In case the Bureau should cease to exist, it shall be liquidated under the supervision of the Government of Cuba, the balance of the funds remaining to be distributed among the Contracting States in the same proportion as they contributed to its support. The buildings and other tangible property of the Bureau shall become the property of the Government of Cuba in recognition of the services of that Republic in giving effect to this Protocol; the Government of Cuba agreeing to dedicate such property to purposes essentially inter-American in character.

The Contracting States agree to accept as final any steps that may be taken for the liquidation of the Bureau.

Artículo 17.

Las estipulaciones contenidas en este Protocolo tendrán fuerza de ley en aquellos Estados en que los tratados internacionales tienen ese carácter tan pronto como son ratificados por sus órganos constitucionales.

Los Estados Contratantes en que el cumplimiento de los pactos internacionales esté subordinado a la promulgación de leyes concomitantes, al aceptar en principio este Protocolo, se obligan a solicitar de sus órganos legislativos la adopción en el más breve plazo posible de la legislación que sea necesaria para ponerla en vigor, de acuerdo con sus prescripciones constitucionales.

Article 17.

The provisions of this Protocol shall have the force of law in those States in which international treaties possess that character, as soon as they are ratified by their constitutional organs.

The Contracting States in which the fulfillment of international agreements is dependent upon the enactment of appropriate laws, on accepting in principle this Protocol, agree to request of their legislative bodies the enactment of the necessary legislation in the shortest possible period of time and in accordance with their constitutional provisions.

da Secretaria e approvado pelo Chefe Executivo do Estado em que estiver estabelecida a Secretaria. O Director da Secretaria submetterá tambem um relatorio annual a todos os Estados ratificantes, para o seu conhecimento.

Artigo 16.

No caso da Secretaria deixar de existir, será liquidada debaixo da superintendencia do Governo de Cuba, devendo o saldo dos fundos ser distribuido entre os Estados Contractantes na mesma proporção em que contribuiram para a manutenção. O edificio e demais haveres materiaes da Secretaria ficarão sendo propriedade do Governo de Cuba em reconhecimento dos serviços prestados por essa Republica no effectivar este Protocollo; o Governo de Cuba se compromette a dedicar este edificio a fins de caracter essencialmente Inter-Americanos.

Os Estados Contractantes concordam em aceitar como finaes quaesquer medidas que sejam tomadas para a liquidação da Secretaria.

Artigo 17.

As disposições deste Protocollo terão a força de lei naquelles Estados em que os tratados internacionaes tenham esse caracter, logo que forem ratificadas pelos seus orgãos constitucionaes.

Os Estados Contractantes nos quaes o cumprimento dos accordos internacionaes depender da promulgação de leis consentaneas, ao aceitar em principio este Protocollo concordam em solicitar dos seus orgãos legislativos a promulgação da necessaria legislação dentro do mais breve prazo possivel e de accordo com as suas disposições constitucionaes.

Bureau au Chef du Pouvoir Exécutif de l'état dans lequel le bureau est établi et approuvés par lui. Le Directeur du Bureau présentera également un rapport annuel à tous les états ayant ratifié le présent protocole, pour leur information.

Article 16.

Dans le cas où le Bureau cesserait d'exister, il sera procédé à sa liquidation sous le contrôle du Gouvernement de Cuba et le reliquat des fonds distribué aux États contractants en proportion des paiements effectués par eux. Les immeubles et tous autres biens matériels du Bureau deviendront la propriété du Gouvernment de Cuba en reconnaissance des services rendus par cette République en assurant l'exécution de ce protocole. Le Gouvernement de Cuba s'engage à consacrer cette propriété à des fins d'un caractère essentiellement interaméricain.

Les États contractants conviennent d'accepter comme définitives toutes les mesures prises pour la liquidation du Bureau.

Article 17.

Les dispositions de ce Protocole auront force de loi dans les états où les traités internationaux ont ce caractère, aussitôt leur ratification par les organes constitutionnels.

Les États contractants dans lesquels l'entrée en vigueur des accords internationaux est subordonée à la promulgation de lois spéciales, s'engagent par l'acceptation de principe de ce Protocole à requérir à leurs organes législatifs respectifs l'adoption de la législation nécessaire dans le plus bref délai possible conformément à leurs dispositions constitutionnelles.

Artículo 18.

Los Estados Contratantes convienen en que tan pronto como este Protocolo entre en vigor las Convenciones sobre marcas de fábrica de 1910 y 1923 quedarán automáticamente sin efecto alguno en cuanto se refieren a la organización y funcionamiento de la Oficina Interamericana; pero cualesquiera derechos que de acuerdo con sus estipulaciones se hayan adquirido o puedan adquirirse hasta la fecha en que entre en vigor este Protocolo, continuarán siendo válidos hasta que expiren.

Article 18.

The Contracting States agree that, as soon as this Protocol becomes effective, the Trade Mark Conventions of 1910 and 1923 shall automatically cease to have effect in so far as they relate to the organization of the Inter-American Bureau; but any rights which have been or which may be acquired in accordance with the provisions of said Conventions, up to the time of the coming into effect of this Protocol, shall continue to be valid until their due expiration.

Artículo 19.

El presente Protocolo será ratificado por los Estados Contratantes después que hayan ratificado la "Convención General Interamericana para la Protección Marcaria y Comercial," de acuerdo con sus procedimientos constitucionales.

El Protocolo original y los instrumentos de ratificación serán depositados en la Unión Panamericana, la que enviará copia certificada del primero y comunicará aviso del recibo de las ratificaciones a los Gobiernos de los Estados Contratantes, entrando el Protocolo en vigor entre dichos Estados en el orden en que vayan depositando sus ratificaciones.

Este Protocolo regirá indefinidamente, pero podrá ser denunciado mediante aviso anticipado de un año, transcurrido el cual cesará en sus efectos para el Estado denunciante, quedando subsistente para los demás Contratantes. La denuncia será dirigida a la Unión Panamericana que trasmitirá aviso de la misma a los Gobiernos de los demás Estados.

Article 19.

The present Protocol shall be ratified by the Contracting States, in accordance with their respective constitutional procedure, after they shall have ratified the "General Inter-American Convention for Trade Mark and Commercial Protection."

The original Protocol and the instruments of ratification shall be deposited with the Pan American Union, which shall transmit certified copies of the former and shall communicate notice of such ratifications to the Governments of the other signatory States and the Protocol shall become effective for the Contracting States in the order in which they deposit their ratifications.

This Protocol shall remain in force indefinitely, but it may be denounced by means of notice given one year in advance, at the expiration of which it shall cease to be in force as regards the State denouncing the same, but shall remain in force as regards the other States. All denunciations shall be sent to the Pan American Union which will thereupon transmit notice thereof to the other States.

Artigo 18.

Os Estados Contractantes concordam em que logo que este Protocollo entrar em vigencia, as Convenções de Marcas de Fabrica de 1910 e 1923 cessarão automaticamente de vigorar no que diz respeito á organização da Secretaria Inter-Americana; mas quaesquer direitos que tenham sido ou que venham a ser adquiridos de accordo com as disposições das referidas Convenções, até o momento de entrar em vigor este Protocollo continuarão a ser validas até a sua devida expiração.

Artigo 19.

O presente Protocollo será ratificado pelos Estados Contractantes de accordo com os seus respectivos processos constitucionaes, depois de terem ratificado a "Convenção Geral Inter-Americana de Protecção de Marcas de Fabrica e Protecção Commercial."

O Protocollo original e os instrumentos de ratificação serão depositados na União Pan-Americana, que transmittirá copias certificadas do primeiro e communicará a notificação das referidas ratificações aos Governos dos outros Estados signatorias, e o Protocollo vigorará para os Estados Contractantes na ordem em que depositarem as suas ratificações.

Este Protocollo vigorará indefinidamente, mas poderá ser denunciado mediante notificação feita com um anno de antecedencia, no fim do qual deixará de vigorar no que diz respeito ao Estado denunciante mas continuará a vigorar relativamente aos outros Estados. Toda a denuncia será enviada á União Pan-Americana que em seguida transmittirá notificação da mesma aos outros Estados.

Article 18.

Les États contractants conviennent qu'aussitôt l'entrée en vigueur de ce protocole, les Conventions des Marques de Fabrique de 1910 et 1923 cesseront automatiquement avoir effet, en tant qu'elles se réfèrent à l'organisation du Bureau Interaméricain, mais tous droits qui ont été, ou qui peuvent être, acquis conformément aux dispositions des dites Conventions jusqu'à la mise en vigueur de la présente Convention continueront à être valides jusqu'à leur expiration normale.

Article 19.

Le présent Protocole sera ratifié par les États contractants conformément à leur procédure constitutionnelle respective après qu'ils auront ratifié la "Convention Générale Interaméricaine pour la protection des Marques de Fabrique et du Nom Commercial."

Le protocole original et les instruments de ratification seront déposés à l'Union Panaméricaine, qui en transmettra des copies certifiées et donnera avis de ces ratifications aux Gouvernements des autres États signataires, le protocole entrant en vigueur pour les États contractants dans l'ordre dans lequel leurs ratifications sont déposées.

Le présent Protocole restera en vigueur indéfiniment, mais il pourra être dénoncé moyennant notification donnée une année d'avance, à l'expiration de laquelle il cessera d'être en force à l'égard de l'État qui l'aura dénoncé, mais il restera en vigueur à l'égard des autres états. Toutes les dénonciations seront adressées à l'Union Panaméricaine qui en donnera avis aussitôt aux autres Etats contractants.

Los Estados Americanos que no hayan suscrito este Protocolo podrán adherirse a él, enviando el instrumento oficial en que se consigne esta adhesión a la Unión Panamericana, la que lo notificará a los Gobiernos de los demás Estados Contratantes en la forma antes expresada.

The American States which have not signed this Protocol may adhere thereto by sending the respective official instrument to the Pan American Union which, in turn, will thereupon notify the Governments of the remaining Contracting States in the manner previously indicated.

Anexo

Reglamento

Artículo 1.

La solicitud para obtener protección bajo el Protocolo del cual este Anexo es parte integrante, deberá hacerse por el titular de la marca o por su representante legal a la administración del Estado en que dicha marca haya sido registrada o depositada originalmente, de acuerdo con las disposiciones vigentes en dicho Estado, acompañando un giro postal o bancario pagadero al Director de la Oficina Interamericana de Marcas, por la suma requerida en el Protocolo. Tanto la solicitud como el giro deberán ir acompañados de un electrotipo de 10 x 10 centímetros, que sea reproducción fiel de la marca tal como ésta ha quedado registrada en el Estado de registro original.

Artículo 2.

Una vez que la Oficina Nacional haya comprobado que el registro de la marca es legal y válido, deberá enviar a la Oficina Interamericana de Marcas, a la mayor brevedad posible:

A. El giro;
B. El electrotipo de la marca;

C. Un certificado en duplicado con los siguientes detalles:

1. Nombre y dirección del propietario de la marca;
2. Fecha en que se hizo la solicitud de registro en el Estado del registro original;
3. Fecha en que la marca fué registrada en dicho Estado;
4. Número del orden de registro en dicho Estado.
5. Fecha en que expira la protección de la marca en dicho Estado;
6. Un facsímile de la marca tal como se usa.
7. Una relación de los productos en que se utiliza;

Annex

Regulations.

Article 1.

The application to obtain protection under the Protocol of which the present Annex is a part shall be made by the owner of the mark or his legal representative to the administration of the State in which the mark has been originally registered or deposited in accordance with the provisions in force in that State, accompanied by a money order or draft payable to the Director of the Inter-American Trade Mark Bureau in the sum required by the Protocol. The application and money order shall be accompanied by an electrotype (10 x 10 centimeters) of the mark reproducing it as registered in the State of original registration.

Article 2.

The National Bureau of such State having ascertained that the registration of the mark is legal and valid shall send to the Inter-American Trade Mark Bureau, as soon as possible:

A. The money order;
B. The electrotype of the mark;

C. A certificate in duplicate containing the following details:

1. The name and address of the owner of the mark;
2. The date of the application for registration in the State of original registration;
3. The date of registration of the mark in such State;
4. The order number of the registration in such State;
5. The date of expiration of the protection of the mark in such State;
6. A facsimile of the mark as used;
7. A statement of the goods on which the mark is used;

Os Estados Americanos que não tenham assignado este Protocollo poderão adherir ao mesmo mediante envio do respectivo instrumento official á União Pan-Americana que, por sua vez, transmittirá a competente notificação aos Estados Contractantes na maneira previamente indicada.

Les États américains qui n'ont pas signé ce protocole peuvent y adhérer en adressant les instruments officiels à l'Union Panaméricaine, laquelle à son tour en avisera les Gouvernements des autres États contractants dans les formes précédemment indiquées.

ANNEXO.

REGULAMENTO.

Artigo 1.

O pedido de protecção de accordo com o Protocollo do qual faz parte este Annexo será feito pelo dono da marca, ou seu representante legal á administração do Estado no qual a marca foi originariamente registrada ou depositada de accordo com as disposições em vigor nesse Estado, accompanhado do vale postal ou letra pagavel ao Director da Secretaria Inter-Americana de Marcas de Fabrica na importancia exigida por este Protocollo. O pedido e o vale serão accompanhados de um electrotypo (10 x 10 centimetros) da marca, reproduzindo-a tal como se achar registrada no Estado de domicilio do dono,

ANNEXE.

RÈGLEMENTS.

Article 1.

La demande pour obtenir protection conformément au Protocole dont la présente Annexe est partie sera adressée par le propriétaire de la marque ou par son représentant légal, à l'Administration de l'État dans lequel la marque a été originairement enregistrée et déposée conformément aux dispositions en vigueur dans cet état. Elle sera accompagnée d'un mandat ou d'une chèque payable au Directeur du Bureau Interaméricain des Marques de Fabrique pour la somme fixée par ce Protocole. La demande et le mandat seront accompagnés d'une reproduction électrotype (10 x 10 centimètres) de la marque, dans l'État du domicile du propriétaire, la montrant telle qu'elle a été enregistrée dans l'État où a eu lieu l'enregistrement original.

Artigo 2.

A Secretaria Nacional do dito Estado depois de ter verificado que a marca é legal e valida enviará á Secretaria Inter-Americana de Marcas de Fabrica com a possivel brevidade:

A. O vale postal;

B. O electrotypo da marca;

C. Um certificado em duplicata contendo os seguintes detalhes:

1. O nome e endereço do dono da marca;
2. A data do pedido de registro no Estado do registro original;
3. A data do registro da marca no dito Estado;
4. A ordem do numero do registro no dito Estado;
5. A data de expiração da protecção da marca no dito Estado;
6. Um fascimile da marca usada;
7. Uma declaração das mercadorias nas quaes se acha applicada a marca;

Article 2.

Le Bureau national de cet État s'étant assuré que l'enregistrement de la marque est légale et valide enverra le plus tôt possible au Bureau Interaméricain des Marques de Fabrique:

A. Le mandat;

B. La reproduction électrotype de la marque;

C. Un certificat en double expédition contenant les details suivants:

1. Le nom et l'adresse du propriétaire de la marque;
2. La date de la demande d'enregistrement dans l'État de l'enregistrement original;
3. La date de l'enregistrement de la marque dans cet état;
4. Le numéro d'ordre de l'enregistrement dans cet état;
5. La date d'expiration de la protection de la marque dans cet état;
6. Un fac-similé de la marque telle qu'il en est fait usage;
7. Une liste des produits pour lesquels cette marque est utilisée;

8. Fecha en que se hizo la solicitud a la Oficina Nacional del Estado de registro original para obtener protección de acuerdo con la Convención y este Protocolo.

D. En el caso de que el solicitante desee reclamar un color como elemento distintivo de su marca, treinta copias de la marca impresas en papel, mostrando dicho color, así como una breve descripción de la misma.

Artículo 3.

Dentro de diez días contados desde el recibo del material requerido por el Artículo 2, la Oficina Interamericana de Marcas procederá a inscribir toda la información en sus libros y a notificar a la Oficina Nacional de dicho Estado el recibo de la solicitud y la fecha y número del registro interamericano.

Artículo 4.

Dentro de treinta días contados desde dicho recibo, se procederán a enviar copias detalladas del registro interamericano a las Oficinas Nacionales de los Estados que hayan ratificado el Protocolo.

Artículo 5.

La Oficina Interamericana de Marcas publicará periódicamente un boletín en el cual aparecerán los datos incluidos en el certificado a que se refiere el inciso C del Artículo 2 de este Reglamento y la información que fuere pertinente sobre el registro de dichas marcas en los distintos países.

La Oficina Interamericana de Marcas podrá, además, publicar en su boletín, o por separado, libros, documentos, informes, estudios y artículos relacionados con la protección de la propiedad industrial.

Artículo 6.

La aceptación, objeción o denegación de una marca por la Oficina Nacional de cualquiera de los Estados Contratantes deberá trasmitirse a la oficina del Estado de origen de la solicitud, con objeto de que lo comunique a quien pueda interesar dentro de los diez días siguientes a la fecha de su recibo por la Oficina Interamericana de Marcas.

Artículo 7.

Todo aviso de cambio de propiedad de una marca, comunicado por la oficina del país de origen a la Oficina Inter-

8. The date of the application to the National Bureau of the State of the original registration to obtain protection under the Convention and this Protocol.

D. When the applicant wishes to claim color as a distinctive element of his mark, thirty copies of the mark printed on paper, showing the color, and a brief description of the same.

Article 3.

Within ten days after receipt from such administration of the matter required by Article 2, the Inter-American Trade Mark Bureau shall enter all information in its books and inform the National Bureau of such State of the receipt of the application and of the number and date of the inter-American registration.

Article 4.

Within thirty days after such receipt, detailed copies of the inter-American registration shall be sent to the National Bureaus of those States which have ratified the Protocol.

Article 5.

The Inter-American Trade Mark Bureau shall publish a periodic bulletin wherein shall appear the data included in the certificate provided for by Section C of Article 2 of these Regulations and also all other information which may be appropriate concerning registration of such marks in the various States.

The Inter-American Trade Mark Bureau may also publish in its bulletin or separately, books, documents, information, studies, and articles concerning the protection of industrial property.

Article 6.

The acceptance, opposition, or refusal of a mark by the National Bureau of any one of the Contracting States shall be transmitted within ten days following the date of its receipt by the Inter-American Trade Mark Bureau to the administration of the State of origin of the application with a view to its communication to whom it may concern.

Article 7.

Changes in ownership of a mark communicated by the Bureau of the country of origin to the Inter-American

8. A data do pedido feito á Secretaria Nacional do Estado de registro original, para obtenção de protecção de accordo com a Convenção e este Protocollo.

D. Quando o solicitante requerer a uso como elemento distinctivo de sua marca, trinta copias da marca impressa em papel, mostrando a côr, e uma breve descripção da mesma.

Artigo 3.

Dentro de dez dias depois de recebida da dita administração a materia exigida pelo Artigo 2, a Secretaria Inter-Americana de Marcas de Fabrica consignará toda a informação nos seus livros e informará á Secretaria Nacional dos ditos Estados do recebimento do pedido e do numero e da data do registro Inter-Americano.

Artigo 4.

Dentro de 30 dias após o dito recebimento, enviar-se-ão copias detalhadas do registro Inter-Americano ás Secretarias Nacionaes dos Estados que tenham ratificado o Protocollo.

Artigo 5.

A Secretaria Inter-Americana de Marcas de Fabrica publicará um boletim periodico no qual apparecerão os dados abrangidos no certificado previsto na Secção C do Artigo 2 deste Regulamento e outrosim toda e qualquer informação que fôr apropriada relativamente ao registro de marcas nos diversos Estados.

A Secretaria Inter-Americana poderá tambem publicar no seu boletim ou separadamente livros, documentos, informações, estudos e artigos relativos á protecção da propriedade industrial.

Artigo 6.

A aceitação, impugnação ou denegação de uma marca pela Secretaria Nacional de qualquer dos paises contractantes será transmittida dentro de dez dias a partir da data do seu recebimento pela Secretaria Inter-Americana de Marcas de Fabrica á administração do Estado de origem do pedido no intuito de ser communicada a quem interessar possa.

Artigo 7.

As mudanças na posse de uma marca communicadas pela Secretaria do pais de origem á Secretaria Inter-Americana

8. La date de la demande adressée au Bureau national de l'état de l'enregistrement original, en vue d'obtenir la protection conformément à la Convention et à ce Protocole.

D. Lorsque le requérant désire revendiquer une certaine couleur comme élément distinctif de sa marque, trente exemplaires de la marque imprimée sur papier montrant cette couleur ainsi qu'une brève description de celle-ci.

Article 3.

Dans les dix jour qui suivent la réception de cette Administration des éléments requis à l'Article 2, le Bureau Interaméricain des Marques de Fabrique inscrira tous les renseignements sur ses registres et il informera le Bureau national de cet État de la réception de la demande, du numéro et de la date de l'enregistrement interaméricain.

Article 4.

Dans les trente jours qui suivent cette réception, des copies détaillées de l'enregistrement interaméricain seront envoyées aux Bureaux nationaux des États qui ont ratifié le Protocole.

Article 5.

Le Bureau Interaméricain des Marques de Fabrique publiera un bulletin periodique dans lequel figureront les données inclues dans le certificat auxquelles se réfère le paragraphe C de l'Art. 2 des présents Règlements, et aussi toutes autres informations utiles concernant l'enregistrement de ces marques dans les divers états.

Le Bureau Interaméricain des Marques de Fabrique peut aussi publier dans son bulletin ou séparément des livres, documents, renseignements, études et articles concernant la protection de la propriété industrielle.

Article 6.

L'acceptation, l'opposition ou le refus d'une marque par le Bureau national de l'un quelconque de Etats contractants sera transmis dans les dix jours suivant la date de sa réception par le Bureau Interaméricain des Marques de Fabrique, à l'Administration de l'État d'origine de la demande en vue de sa communcation à tout intéressé.

Article 7.

Les changements de propriété d'une marque transmis par le Bureau du pays d'origine au Bureau Interaméricain des

americana de Marcas, que vaya acompañado de los respectivos derechos deberá examinarse y anotarse en el registro, enviándose el correspondiente aviso a las Oficinas de los demás Estados Contratantes en que dichos cambios deban hacerse, acompañado de los derechos que les corresponda; todo dentro del plazo fijado respecto de la solicitud.

Trade Mark Bureau and accompanied by the required fees shall be examined, entered in the register, and corresponding notice sent to the Bureaus of the other Contracting States in which the transfer is to take place, accompanied by the proper fees, all within the time herein fixed with respect to applications.

Artículo 8.

El Director de la Oficina Interamericana de Marcas será nombrado por el Poder Ejecutivo del Estado en que la misma esté sita, entre abogados de experiencia en la materia y de solvencia moral reconocida. El Director podrá a discreción nombrar o remover los funcionarios o empleados de su Oficina, notificándolo al Gobierno de Cuba; y adoptar y promulgar los reglamentos, circulares, y disposiciones que considere convenientes para la buena marcha de la Oficina y que no sean incompatibles con este Protocolo.

Article 8.

The Director of the Inter-American Trade Mark Bureau shall be appointed by the Executive Power of the State in which the Bureau is located, from among lawyers of experience in the subject matter and of recognized moral standing. The Director, at his discretion, may appoint or remove the officials or employees of his Bureau, giving notice thereof to the Government of Cuba; adopt and promulgate such other rules, regulations and circulars as he may deem convenient for the proper functioning of the Bureau and which are not inconsistent with this Protocol.

Artículo 9.

La Oficina Interamericana de Marcas podrá emprender cualquiera investigación sobre marcas que el Gobierno de cualquiera de los Estados Contratantes le pueda encomendar, así como también estimular la investigación de los problemas, dificultades u obstáculos que puedan impedir el funcionamiento de la Convención General Interamericana de Protección Marcaria y Comercial o de este Protocolo.

Article 9.

The Inter-American Trade Mark Bureau may carry on any investigation on the subject of trade marks which the Government of any of the Contracting States may request, and encourage the investigation of all problems, difficulties or obstacles which may hinder the operation of the General Inter-American Convention for Trade Mark and Commercial Protection, or of this Protocol.

Artículo 10.

La Oficina Interamericana de Marcas coadyuvará con los Gobiernos de los Estados Contratantes en la preparación del material para conferencias internacionales de esta índole; suministrará a dichos Estados cualesquiera indicaciones que considere de utilidad así como las opiniones que puedan pedírsele respecto a las modificaciones que deban introducirse en los pactos interamericanos o en las leyes relativas a las materias de que ella trata; y en general, facilitará el cumplimiento de los fines de este Protocolo.

Article 10.

The Inter-American Trade Mark Bureau shall cooperate with the Governments of the Contracting States in the preparation of material for international conferences on this subject; submit to those States such suggestions as it may consider useful, and such opinions as may be requested as to the modifications which should be introduced in the inter-American pacts or in the laws concerning these subjects and in general facilitate the execution of the purposes of this Protocol.

Artículo 11.

La Oficina Interamericana de Marcas informará a los Gobiernos signatarios, cuando menos una vez al año, de los trabajos que haya efectuado o esté haciendo durante ese período.

Article 11.

The Inter-American Trade Mark Bureau shall inform the signatory Governments at least once a year as to the work which the Bureau has done or is doing.

Marcas de Fabrica e acompanhadas
s emolumentos exigidos serão exami-
das, passadas para o registro e será
viada a correspondente noticia ás
retarias dos outros Estados Con-
ctantes nos quaes terá de se effectuar
transferencia, acompanhada da com-
ente taxa, tudo dentro do tempo
pecificado relativamente a requeri-
ntes.

Artigo 8.

O Director da Secretaria Inter-
mericana de Marcas de Fabrica será
meado pelo Poder Executivo do
stado em que estiver estabelecida
Secretaria, entre advogados de
periencia na materia e de reconhecida
egridade moral. Compete ao Direc-
nomear ou dispensar á sua dis-
ção os funccionarios ou empregados
sua Secretaria, do que notificará
Governo de Cuba; adoptar e pro-
ulgar quaesquer outras regras, regula-
entos e circulares que julgar conve-
entes para o devido funccionamento
Secretaria e que não forem incom-
tiveis com esta Convenção.

Artigo 9.

A Secretaria Inter-Americana de
arcas de Fabrica poderá promover
alquer investigação sobre o assumpto
marcas de fabrica que o governo de
alquer dos Estados Contractantes
licitar, e animar a investigação de
dos os problemas, difficuldades ou
taculos que possam tolher a ope-
ção da Convenção Inter-Americana
ral para a Protecção de Marcas de
brica e Protecção Commercial.

Artigo 10.

Compete á Secretaria Inter-Ameri-
na de Marcas de Fabrica cooperar
m os governos dos Estados Con-
ctantes na preparação de ma-
ria para conferencias internacionaes
bre este assumpto; submetter aos
feridos Estados as suggestões que
lgar uteis, e os pareceres que lhe
rem solicitados quanto ás modifi-
ções que deverão ser introduzidas nos
ctos inter-americanos ou nas leis
ferentes a estes assumptos, e em
ral facilitar a execução dos fins deste
rotocollo.

Artigo 11.

Compete á Secretaria Inter-Ameri-
na de Marcas de Fabrica informar
s governos signatarios ao menos
ma vez por anno quanto ao trabalho
ue a Secretaria tiver realisado ou
ue estiver effectuando.

Marques de Fabriques et accompagnés des droits prévus seront examinés et enregistrés, et avis en sera envoyé aux Bureaux des autres états contractants dans lesquels le transfert doit avoir lieu en y joignant les droits correspondants; le tout dans le temps fixé respectivement à la demande.

Article 8.

Le Directeur du Bureau Interaméricain des Marques de Fabrique sera désigné par le Pouvoir Exécutif de l'État dans lequel le Bureau est situé, parmi les avocats expérimentés en la matière et d'une moralité reconnue. Le directeur peut nommer ou congédier, à sa discrétion, les fonctionnaires et employés de son Bureau, en donnant avis au gouvernement de Cuba; adopter et promulguer telles autres règles, règlements et circulaires qu'il peut juger convenables au bon fonctionnement du Bureau et qui ne sont pas incompatibles avec ce Protocole.

Article 9.

Le Bureau Interaméricain des Marques de Fabrique peut se livrer à toute investigation au sujet des marques de fabrique que le Gouvernment de l'un des États contractants peut demander, et encourager l'étude de tous problèmes, difficultés ou obstacles qui font obstacle à la mise en oeuvre de la Convention Générale Interaméricaine pour la Protection des Marques de Fabrique et du Nom Commercial, ou de ce Protocole.

Article 10.

Le Bureau Interaméricain des Marques de Fabrique coopérera avec les Gouvernements des États contractants dans la préparation de la matière des conférences internationales sur ce sujet; il soumettra aux dits états telles suggestions qu'il peut considérer utiles et telles opinions qui peuvent être requises quant aux modifications qui devraient être introduites dans les pactes interaméricains ou dans les lois concernant ces questions, en général faciliter la réalisation des fins de ce Protocole.

Article 11.

Le Bureau Interaméricain des Marques de Fabrique renseignera les Gouvernements signataires, au moins une fois pas an, sur le travail en cours ou accompli par le Bureau.

Artículo 12.

La Oficina Interamericana de Marcas mantendrá en lo posible relaciones con otras oficinas de la misma índole, y con instituciones y organismos científicos e industriales, para el intercambio de publicaciones, informes y datos relacionados con el progreso del derecho con respecto a la protección marcaria, la defensa y protección de los nombres comerciales y la represión de la competencia desleal y de las falsas indicaciones de procedencia.

Artículo 13.

Este Reglamento podrá ser modificado en cualquier tiempo a solicitud de cualquiera de los Estados Contratantes o del Director de la Oficina, siempre que la modificación no infrinja la Convención General ni el Protocolo de que el Reglamento forma parte, y haya sido aprobada por el Consejo Directivo de la Unión Panamericana, después de circulada entre los Estados Contratantes por un período de seis meses antes de la aprobación por la Unión Panamericana.

En testimonio de lo cual los delegados arriba nombrados firman el presente Protocolo en español, inglés, portugués y francés, y estampan sus respectivos sellos.

Hecho en la ciudad de Wáshington a los veinte días del mes de febrero de mil novecientos veintinueve.

Article 12.

The Inter-American Trade Mark Bureau shall maintain as far as possible relations with similar offices and scientific and industrial institutions and organizations for the exchange of publications, information, and data relative to the progress of the law on the subject of the protection of trade marks, defense and protection of commercial names and suppression of unfair competition and false indications of origin.

Article 13.

These Regulations may be modified at any time at the request of any of the Contracting States or the Director of the Bureau, provided that the modification does not violate the General Convention or the Protocol of which the Regulations form a part, and that the modification is approved by the Governing Board of the Pan American Union after having been circulated among the Contracting States for a period of six months before submission for the approval of the Pan American Union.

In witness whereof the above named delegates have signed this Protocol in English, Spanish, Portuguese and French, and thereto have affixed their respective seals.

Done in the City of Washington on the twentieth day of February in the year one thousand nine hundred and twenty-nine

Artigo 12.

Compete á Secretaria Inter-Americana de Marcas de Fabrica, até onde for possivel, manter relações com repartições de natureza semelhante e instituições e organizações scientificas e industriaes, com o fim de promover o intercambio de publicações, informações e dados relativamente ao progresso da lei sobre materias de protecção de marcas de fabrica, defesa e protecção de nomes commerciaes e suppressão de concurrencia desleal e falsas indicações de origem.

Article 12.

Le Bureau Interaméricain des Marques de Fabrique entretiendra autant que possible des relations avec les bureaux similaires et les institutions et organisations scientifiques et industrielles pour l'échange de publications, de renseignements et documents relatifs au progrès de la loi sur la protection des marques de fabrique, la défense et la protection du nom commercial, la suppression de la concurrence déloyale et des fausses indications d'origine.

Artigo 13.

Este Regulamento poderá ser modificado em qualquer tempo a pedido de qualquer dos Estados Contractantes ou do Director da Secretaria, com tanto que a modificação não viole a Convenção Geral ou o Protocollo do qual elle faz parte, e que a dita modificação seja approvada pelo Conselho Director da União Pan-Americana, depois de ter circulado entre os Estados Contractantes durante um periodo de seis mezes antes de ser submettido á approvação da União Pan-Americana.

Article 13.

Ces Règlements peuvent être modifiés à tout moment à la demande de l'un des États contractants ou du Directeur du Bureau, pourvu que la modification ne viole pas la Convention générale ou le Protocole dont les Règlements font partie, et que la modification soit approuvée par le Conseil d'Administration de l'Union Panaméricaine, après avoir été portée à la connaissance des États contractants six mois avant l'approbation de l'Union Panaméricaine.

Em testemunho do que os delegados acima designados assignam este Protocollo em portuguez, inglez, hespanhol, e francez, e a elle appõem os seus respectivos sellos.

Dado na Cidade de Washington aos vinte dias do mez de fevereiro do anno mil e nove centos e vinte e nove.

En foi de quoi, les délégués susnommés ont signé le présent Protocole en francais, en espagnol, en anglais et en portugais et y ont apposé leurs sceaux respectifs.

Fait en la ville de Washington, le vingtième jour du mois de février de l'an mil neuf cent vingt-neuf.

[SEAL.] A. GONZÁLEZ PRADA
[SEAL.] EMETERIO CANO DE LA VEGA
[SEAL.] JUAN VICENTE RAMÍREZ
[SEAL.] GONZALO ZALDUMBIDE
[SEAL.] FRANCISCO DE MOYA
[SEAL.] R. J. ALFARO
[SEAL.] JUAN B. CHEVALIER
[SEAL.] P. R. RINCONES
[SEAL.] MANUEL CASTRO QUESADA
[SEAL.] F. E. PIZA
[SEAL.] GUSTAVO GUTIÉRREZ.
[SEAL.] A. L. BUFILL
[SEAL.] RAOUL LIZAIRE
[SEAL.] PABLO GARCÍA DE LA PARRA
[SEAL.] CARLOS DELGADO DE CARVALHO
[SEAL.] F. SUÁSTEGUI
[SEAL.] VICENTE VITA
[SEAL.] CARLOS IZAGUIRRE V.
[SEAL.] FRANCIS WHITE
[SEAL.] THOMAS E. ROBERTSON
[SEAL.] EDWARD S. ROGERS

AND WHEREAS the said Convention and the said Protocol have been duly ratified on the part of the United States of America and the instrument of ratification by the United States of America was deposited with the Pan American Union on February 17, 1931;

AND WHEREAS the said Convention and Protocol have been ratified by the Government of Cuba, whose instrument of ratification thereof was deposited with the Pan American Union on April 2, 1930; and the said Convention has been ratified by the Government of Guatemala, whose instrument of ratification thereof was deposited with the Pan American Union on December 30, 1929;

NOW, THEREFORE, BE IT KNOWN THAT I, HERBERT HOOVER, President of the United States of America, have caused the said Convention and the said Protocol to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this twenty-seventh day of February in the year of our Lord one thousand nine hundred
[SEAL] and thirty-one, and of the Independence of the United States of America the one hundred and fifty-fifth.

HERBERT HOOVER

By the President:
HENRY L STIMSON
Secretary of State.

EIGHTH RESOLUTION ADOPTED BY THE PAN AMERICAN TRADE MARK CONFERENCE ON FEBRUARY 19, 1929

GLOSSARY

RESOLVED, That the following glossary be followed in the interpretation of terms contained in the General Inter-American Convention on Trade Mark and Commercial Protection, and in the Protocol on the Inter-American Registration of Trade Marks, approved by the Conference:

Nationals: persons; partnerships; firms; corporations; associations; syndicates, unions and all other natural and juridical persons entitled to the benefit of nationality of the contracting countries.

Persons: include not only natural persons but all juridical persons such as partnerships, firms, corporations, associations, syndicates and unions.

Marks or *Trade marks:* include manufacturing, industrial, commercial, agricultural marks, collective marks, and the marks of syndicates, unions and associations.

Collective marks: mean marks lawfully used by two or more owners.

Commercial names: include trade names, names of individuals, surnames, partnership firm and corporate names, and the names of syndicates, associations, unions and other entities recognized by the laws of the Contracting States, and which are used in manufacturing, industry, commerce and agriculture to identify or distinguish the user's trade, calling or purpose.

Ownership: as applied to trade marks means the right acquired by registration in countries where the right to a trade mark is so acquired, and the right acquired by adoption and use in countries where the right to a trade mark is so acquired.

Owner or *Proprietor:* means the natural or juridical person entitled to ownership as above defined.

Deposit: means the filing of a trade mark in any Contracting Country other than the country of original registration.

Interfering mark or *Infringing mark:* means a mark which so resembles one previously registered, deposited, or used by another person as to be likely, when applied to goods, to cause confusion or mistake or to deceive purchasers as to their commercial source or origin.

Country of origin: means the country of original registration of the mark and not the country of the citizenship or domicile of the registrant or depositor.

Injunction: means a judicial order or process, operating upon the person, requiring the party to whom it is directed to do or (usually) refrain from doing some designated thing.

$: Wherever this sign is used it shall be understood to mean money which is legal currency in Cuba and which has a value equivalent to that of the dollar.

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